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Individual
Gary
Carlson
No
<p>The exception process is an improvement over the status quo, but the amendments require additional work. Michigan Public Power Agency (MPPA) submitted comments on the BES definition and the Exception process in Project No. 2010-17 and incorporates those comments here. In addition, Michigan Public Power Agency (MPPA) provides the following comments: 1. A party seeking an exception should not face the burden of compliance during the exception process. NERC and the RE should be required to consider a stay of the compliance requirements or a reduced compliance burden during the exception process. Those parties seeking an exception are arguably those systems that do not have a material impact the Bulk Electric System or are not necessary for the reliable operation of the transmission network. Thus, there is no clear and convincing reason for requiring such an entity to comply with standards during the very lengthy exception process. This is particularly important considering the timeframe for seeking an exception could take nearly two years (The timeframes according to the flow chart attached to the 1703 announcement include a 14 month period for the exceptions process and an 8 month period for the appeals process.) This is even before the aggrieved party gets to FERC and the Courts of Appeal. This is not efficient or effective administration and is a denial of due process to the aggrieved party. 2. The timing of the exceptions process should be reduced from the proposed time frame of 14+ months to 4-6 months from the date of submittal to the date a decision is rendered. Likewise, the timing of the appeals process at NERC should be reduced from the proposed 8 month process to 3-4 months.</p>
No
<p>The concern about "one size fits all" stems, in part, from the RE refusing to consider a risk-based approach when evaluating the compliance burden placed on an entity that poses to no material risk to the BES. To date, an entity that seeks to discuss a reduced compliance burden with the RE has been met with the response that "all standards apply to all entities" – or "one size fits all". The development of the exceptions process recognizes that not all entities that meet the "threshold" criteria pose a risk to the BES. This is a significant step in the right direction. But the problem remains that those entities seeking the exception are still required, by default, to comply with all standards during the exceptions process. MPPA submitted comments in 2010-17 that, as part of the exception process, the RE must be required to consider a stay of compliance during the evaluation or a reduced compliance burden.</p>
Yes
<p>1. In proposed section 1703, paragraph "2", the following two sentences should be added at the end of the paragraph. "Any response submitted by a Regional Entity or Submitting Entity, (or Owner, if different) must be accompanied by an affidavit of a qualified individual to attest to the accuracy and correctness of the factual information and technical opinions contained in any such response. The Submitting Entity (or Owner, if different) may submit a reply within 15 days following the date a response is filed with NERC." Permitting the aggrieved party to submit a reply is consistent with standard litigation and appellate processes. 2. Proposed section 1703, paragraphs "3" and "4" must be reconciled/combined so that there is a single appeal/review process. Paragraph "3" provides that the appeal first</p>

proceed before a NERC review panel. Paragraph "4" provides for yet another review by the NERC Board of Trustees Compliance Committee ("NERC BOTCC"). Under these procedures (combined with the proposed Appendix 5-C), the request for exception and appeals process runs nearly two years. This is not an efficient or effective process and is not just and reasonable. It prevents the aggrieved party from reaching FERC and the federal Courts of Appeal within a reasonable timeframe, all the while being subjected to compliance requirements, threats of compliance violations and compliance fines. Either bind the NERC BOTCC to the decision of the NERC review panel, or eliminate the NERC review panel altogether and have the NERC BOTCC make the decision in the first place. But, there is no clear explanation or justification for requiring an aggrieved party to have to appeal to the NERC review panel and then the NERC Board of Trustees before reaching FERC and the Courts of Appeal. 3. A new paragraph should be added that requires the NERC review panel (or NERC BOTCC, whichever the case may be) to vacate a decision by the regional entity if the decision made by the RE fails to include an attestation of a qualified individual or individuals to support the factual and technical bases relied upon by the RE in rendering a decision on the exception. (This is different from Comment No. 1, which pertains to an Answer submitted by the RE during the appeals process. This comment pertains to the substance of the decision at the RE level. Requiring a qualified individual from the RE to attest to the facts and technical arguments relied upon by the RE in arriving at the decision will ensure that someone at the RE level is prepared to take responsibility for reviewing a decision before it is issued, to stand behind the assertions and conclusions reached by the Regional Entity, and whom the Submitting Party may cross examine at hearing – whether that be a hearing at NERC or a hearing at FERC, should the appeals process continue to FERC. If the RE is not willing to state that it has one or more individuals that can stand behind the decision, then the decision is suspect on its face and should not take the time and resources of the NERC review panel.) 4. An aggrieved party must have the right to request a hearing before the NERC review panel/NERC BOTCC and should not be limited to a paper process. 5. The NERC review panel/NERC BOTCC must make a decision based solely upon information that is presented to it in the record; and may not make a decision based upon information that is outside of the record. That is, the NERC review panel/NERC BOTCC may not, on its own, conduct an investigation or seek information independently from what has been presented to it. If the NERC review panel requires additional information, it must transparently (openly) request such information, and such information must be provided to the aggrieved party, if the aggrieved party is not the party from whom the information is sought. The aggrieved party must have an opportunity to comment upon or challenge that information before the NERC review panel relies upon any such additional information.

Individual

Eric Lee Christensen

Snohomish County PUD

Yes

Public Utility District No. 1 of Snohomish County, Washington ("SNPD") agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required an RE or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, SNPD believes the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement:

1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We recommend that the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we recommend that the ROP Team eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictated by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be

able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required to WECC's technical expertise under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. 3. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance, but would not required the full-blown effort and production of information involved in an Exception process. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore

directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for the these questions to be addresses under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 4. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the capitalized language represents new or changed wording): "Where the Submitting Entity FILES AN EXCEPTION REQUEST for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the SUBMITTING ENTITY MAY FILE A SINGLE EXCEPTION REQUEST COVERING ALL SUCH ELEMENTS. SUCH AN EXCEPTION REQUEST MUST IDENTIFY THE RELEVANT ELEMENTS OR GROUPS OF ELEMENTS WITH SUFFICIENT SPECIFICITY THAT THEY MAY BE READILY IDENTIFIED BY THE REVIEWING BODY, INCLUDING IDENTIFICATION OF THE NETWORK OR SYSTEM OF WHICH THE ELEMENTS ARE A PART, BUT THE SUBMITTING ENTITY NEED NOT IDENTIFY EACH ELEMENT OR GROUPS OF ELEMENTS INDIVIDUALLY." 5. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, SNPD believes it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. 6. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, Snohomish agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they

raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it begs the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

We agree that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

We believe the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally:

1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the ROP Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and

will also have other information on the potential effects of a particular decision, so that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for participants are included in the Rules of Procedure. For example, federal courts generally require intervenors and amicus curiae to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by participants will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be wrapped up in unproductive procedural arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what

enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. Snohomish believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated at its level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

SNPD respectfully submits the following additional comments: 1. Amendment Process. Snohomish views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, Snohomish believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4

(2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). Accordingly, while we recognize that the Exception Process has been placed in the NERC Rules of Procedure, we believe that future changes to the Exception Process should be subject to additional procedural protections to ensure the kind of industry participation that has improved the Exception process developed by the ROP Team. Specifically, future changes to the Exception process should require industry input, industry comments, and industry participation in the process of approving changes, such as a super-majority support requirement. 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. In addition, once bifurcation occurs, the process should include a "catch-up" provision, so that if one part of the recommendation is remanded to the RE and then corrected, the portion that is remanded and corrected should, if possible, be reunited with the remainder of the request, so that the entire request would then proceed on a uniform schedule. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the WECC. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable rules. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some

circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any MATERIAL change of condition which would SUBSTANTIALLY affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Group

Joe Tarantino

No

We support the ROP drafting team's efforts to address the due process issues and believe they have generally clarified expectations. We do note a couple of areas where the process could be further clarified and made more efficient: a) In order to avoid unnecessary duplication of efforts and to expedite the process, NERC should defer to a Regional Entity's (RE) technical review of an exception request. NERC should focus its role on oversight of the process (i.e., verifying that the process was judiciously followed by the RE), not duplication of the RE's technical efforts. b) Once the RE determines that a facility does not impact the BES, we recommend that NERC allow that facility to be excluded from the BES. In cases where NERC has a different opinion than the RE, allow the RE's determination to stand through the conclusion of NERC process, including appeals.

No

We remain concerned that clear technical evaluation criteria have not yet been established for the exception request process. This creates a potential for inconsistencies between similar requests. We also note that the references in Section 3 to the term "bulk power system," has not been defined as a term of art for this process, and therefore should be replaced by the term "Bulk Electric System." Specifically, what currently reads "necessary for the Reliable Operation of the interconnected bulk power system," should be replaced by "necessary for the Reliable Operation of the interconnected Bulk Electric System."

Yes

Similar to the BES Definition regarding the exclusion of distribution facilities the ROP should also contain a process to exclude those distribution facilities that are connected at 100+ kV.

Yes

Additional opportunities exist for improving the exception processes: a. The ROP should allow the RE to expedite an exception review for the exclusion of elements that are determined to have no material impact on the BES. Similarly, the RE should be allowed to expedite an exception review for the inclusion of elements that are determined to have a material impact on the BES. b. Transparency – specifically, the ability for an applicant to see, understand, and participate in the steps and rationale being used in the RE's process -- is paramount. along with the need to provide the

submitting entity with a reasonable timeline for review early on in the process.
Group
Michael Gammon
No
The proposed Appendix 5C and new section 1703 is far different than established due process in the NERC Rules of Procedure (RoP). The process for Exception submissions in Appendix 5C should be limited to the process of submission and utilize the due process already established in the RoP if parties cannot come to an agreement. The Regional Entity is included as a Submitting Entity with regard to making submissions outside of an Owner of a BES facility. The Rules of Procedure define the Regional Entity as the Compliance and Enforcement Authority. Submitting Entities are correctly described in the proposed Appendix 5C as an entity within the scope of the Entities responsibility. Regional Entities do not have any operating responsibility for the facilities in question and are not qualified to be included as a Submitting Entity. No part of the process should be publicly posted as the submission already includes all parties with an interest in the outcome. Public posting serves no useful purpose and can contribute to an inadvertent disclosure of confidential information. If any other party requests information regarding an Exception submission, the Owner of the facility and the Submitting Entity should be notified of the request. If the Owner and/or the Submitting Entity does not approve of the disclosure, the request should be denied. Current provisions under FERC's CEII allow sufficient protections of information. Additional methods and rules are not necessary.
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No
The proposed amendments created conflicts within the RoP. More complex and conflicts in process will not be helpful. There is no process to allow substantive concerns with inappropriate release of information or with Regional Entity submission of facilities for inclusion or exclusion of facilities. In addition, if the NERC Board of Trustees takes no action, the decision under protest stands forcing the Registered Entity to take legal actions to affect a potential change. The proposed process requires additional resources to monitor and maintain for the Regional and Registered Entities that are already overwhelmed.
No
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No
No other comments.
Individual

David Thorne
Pepco Holdings Inc.
Yes
Yes
Yes
Yes
Yes
Yes
The sample forms should be included as an appendix with appropriate notes that is only a sample and not mandatory to use, but all data is mandatory for the application to be considered. Having a sample will simplify the effort and process.
Individual
Michael Schiavone
National Grid
Yes
Yes
Yes
Yes
In the Supporting Materials to Draft 2, the BES ROP Team has provided a set of Flow Charts. We would like to have more clarity on how these flow charts should be used. Since they are not directly referenced, we are not sure whether they show the formal process or whether they provide a suggestion on how to interpret the process flow. If they are meant to be a part of the formal Exception Process, we would suggest that they are incorporated or formally referenced in the ROP document, and it is clarified what should prevail if there is a difference in interpretations provided by the text and in the flow chart in the ROP document. Under Item #9 in the BES ROP Team's Consideration of Comments on the NERC ROP Appendix 5C BES Exception Process — Project 2017-10, the BES ROP Team states it feels that compliance would remain 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. We also agree with the BES ROP Team that it is beneficial to avoid including steps that could result in additional uncertainty and possibly unnecessary compliance expense, especially for Submitting Entities that request exclusion of an included Element. We would, with reference to the above referred context, like to reiterate that the implementation period in this draft is too short. The implementation period is a tool that can allow NERC to meet the Commission's directive while softening any resulting ratepayer impacts. Implementation can and should be staged in order to mitigate and even out rate increases. National Grid suggests that the implementation period be flexible to allow entities who anticipate that large and/or expensive upgrades to the BES will be necessary to meet compliance can submit an alternate implementation plan to spread compliance and the associated rate changes over a longer period; we would suggest a minimum of 7 years. This time period was also recognized as a reasonable implementation time period in the recent TPL-001-2 for those portions of the standard that would also result in plans that would require siting, permitting and construction activities.
Group
Jean Nitz
Yes
Yes
Yes
Yes
Yes

Yes
The Webinar held on Sept 28, 2011 was very helpful in addressing substantive concerns raised from the proposed amendments.
Yes
Section 2.0 of Appendix 5C (Definitions) should be considered for removal. We thank the BES ROP Team for retaining these definitions "for ease of reference." However, for administrative reasons we believe this section should be removed from Appendix 5C and a note added in its place referencing the new Appendix 2, Definitions Used in the Rules of Procedure. If any of the definitions in Section 2.0 of Appendix 5C are not already included in Appendix 2, then they should be added to be consistent with the proposed revisions to the ROP and its associated Appendices. Administratively if a term's definition is modified in Appendix 2 and it is also included in Appendix 5C, then the modifications would need to be made in that Appendix as well. By eliminating the Definition section from Appendix 5C, only Appendix 2 would have to be modified when there is a change in definition. Definition 2.9 (Exception) in Appendix 5C has a typo. The word "and" should be replaced with "an." Definition 2.12 (Exception Request Form) in Appendix 5C should be clarified to say what "Section III.B as adopted by NERC" means. Section III.B is the "Detailed Information to Support an Exception Request" draft application form that was posted by the DBES SDT along with the Definition of BES for commenting and balloting which closed on October 10, 2011. In Section 1703 of the NERC ROP, the last sentence in paragraph 4 says the following: "If no written decision or notice declining review is issued within 90 days following the date of submission of the request for review, the appeal shall be deemed to have been denied by the NERC Board of Trustees Compliance Committee and this will have the same effect as a notice declining review." It is our opinion that if a Submitting Entity, or Owner if different, goes through the trouble of filing a request for review including a statement of reasons within 30 days following the panel decision, then said entity deserves a response even if that response is simply a statement declining to review the decision of the panel and saying NERC's decision is final. In Section 4.1, it is not clear why only the Owner or a Regional Entity can submit an Exclusion Exception Request. The PA, RC, TOP, TP, BA and GOP should be able to submit an Exclusion Exception Request as well. We feel GOPs are affected in the same manner as TOPs and should also be able to request an exception. Section 10.2(a) assumes that all Exclusion Exception Requests for newly constructed equipment may not be addressed before the commercial operation of the equipment. Since the same section applies to Exclusion Exception Requests that have been "submitted at least twelve (12) months before commercial operation," all Exception Requests should have been decided. Thus, the section should make it clear that NERC and the Regional Entities must make a decision before the equipment is scheduled to become commercially operable.
Individual
John Bee
Exelon
Yes
Yes
Yes
Yes
Yes
Yes
Yes
If an exception is approved there should be a communication of the exception to industry and an opportunity for like situations to be granted that exception as well. All exceptions should be posted for industry to evaluate.
Individual
Laura Lee
Duke Energy
Yes
Yes
Yes
Yes
No

The fourth paragraph of Section 1.1 of Appendix 5C states that during the pendency of an Exception Request, the status of the Element that is the subject of the request shall remain as determined by strict application of the BES Definition. It should instead have the status requested during evaluation of the request, as the requesting entity is in possession of the most detailed information about the Element.
No
Individual
John Tolo
Tucson Electric Power Company
No
During an exception review, how can Requesting Entities be assured that the Regional Entities will interpret inclusion/exclusion requests equally across all interconnections?
Yes
The process, in and of itself, should work
Yes
Yes
As long as the Regional Entities' initial review is consistent with other Regional Entities
Yes
Yes
Regarding exclusions, I would like some certainty that an Element within the same system Elements will be treated as a single Element and not lumped into the larger system Element. For example, a single transmission line greater than 100 kV in the same system of transmission lines greater than 100 kV is not eligible for exclusion because one other transmission line is included as BES
Individual
Michael Falvo
Independent Electricity System Operator
No
Section 1.2 of Appendix 5C makes clear the authority of Canadian and Mexican Governmental Entities to adopt the proposed Exception Procedure in its entirety or in part with its own deviations while ensuring there will be no adverse impact on the interconnected transmission system. Footnote 2 also provides that Canadian jurisdictions should adopt the same or similar "technical principles" as exception criteria and follow the NERC process. Furthermore, the proposed draft states that Canadian jurisdictions and relevant governmental authority must describe and justify any deviations from the established "technical principles". The reference to "technical principles" is no longer appropriate since those principles have been replaced by the information specified in the form "Detailed Information to Support an Exception Request". This change in approach provides no guidance as to how an Exception Request will be evaluated. In the absence of clearly articulated criteria for evaluating Exception Requests, cross-border entities cannot be expected to justify deviations from the proposed process and technical principles. We strongly suggest that the SDT develop a reference document as part of the Rules of Procedure to provide guidance to Registered Entities, Regional Entities, and the ERO on how a BES Exception application will be evaluated.
No
The lack of transparency with respect to the criteria used to evaluate a BES Exception Request will likely frustrate the goal of having a consistent, repeatable, and verifiable process.
No
The proposed amendments may not result in a process that supports consistent treatment of transmission lines that cross international borders due to the lack of transparency in the criteria used for evaluating a BES Exception Request. Given that Canadian and Mexican Governmental Entities have the authority to deviate from the proposed Exception Procedure, the absence of clearly articulated criteria for evaluating BES Exceptions requests could result in inconsistent treatment of transmission lines that cross international borders.
Yes
We believe that the proposed amendments help alleviate concerns about a "once-size-fits-all" approach. However, we strongly suggest that the SDT develop a reference document as part of the Rules of Procedure to provide guidance to Registered Entities, Regional Entities, and the ERO on how a BES Exception application will be evaluated. Such a reference document is needed to improve the effectiveness of the process by striking a balance between flexibility and clarity of expectations.
Yes

No
Individual
Aaron Staley
Orlando Utilities Commission
Yes
Yes
Yes
Yes
Yes
Yes
Yes
The Bulk Electric System Definition includes Exclusions E1, E2 or E3. If a facility meets one of those exclusions does it also have to complete this exception procedure to be excluded? Or is the exemption procedure only for those facilities that don't clearly fall under E1, E2 and E3.
Individual
Chris de Graffenried
Consolidated Edison Co. of NY, Inc.
No
NERC has failed to address the specific requirements of a key FERC directive contained in Orders No. 743 and 743-A. As such, these Rules of Procedure amendments potentially violate the jurisdictional boundary set between Transmission and local distribution in Federal Power Act (FPA), Section 215, 824(o) and in those Orders. It is our view that the Regions and NERC must first screen all Elements and facilities presented for exception for the presence of "facilities used in the distribution of electric energy." In our view, and that of FERC, these local distribution facilities must be excluded from the Bulk Electric System (BES) as is specifically required in FPA, Section 215, 824(o), and through reference to the FPA by FERC in Order Nos. 743 and 743-A. We recommend that this local distribution exclusion from the BES be automatic upon presentation of appropriate proofs. Only then may NERC apply its various administrative procedures and technical criteria for exempting jurisdictional Transmission Elements and Facilities from the BES, where they may be found not "necessary for operating an interconnected electric energy transmission network." We strongly recommend that NERC adopt, in the proposed amendments to the RoP, the FERC Seven Factor test as the 'first screen' used for identifying and excluding any and all "facilities used in the distribution of electric energy." Filing Entities presenting such appropriate proofs should not need to present further evidence to demonstrate that such Elements and facilities are eligibility for exclusion from the BES. We further recommend that presentation of a local distribution determination by a jurisdictional Federal, State or Provincial body, that such Elements or facilities are "facilities used in the distribution of electric energy," represents appropriate proof and is sufficient for said Elements and facilities to be excluded from the BES. Supporting Discussion: Federal Power Act (FPA), Section 215, 824(o), Definitions differentiates between jurisdictional Transmission and non-jurisdictional local distribution as follows: (a) Definitions- For purposes of this section: (1) The term 'bulk-power system' means-- (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. In FERC Order 743-A the Commission stated 69. We agree ... that the Seven Factor Test could be relevant and possibly is a logical starting point for determining which facilities are local distribution for reliability purposes" By adopting this FERC Seven Factor test, the BES SDT will have fulfilled its obligation to respond to these FERC mandates relating to "local distribution" as stated in FERC Order 743: "Determining where the line between 'transmission' and 'local distribution' lies," (¶37), "To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system" (¶39), to establish "[A] means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition" (¶119). Supporting References: FERC Order 743 observed some believe that "the Commission's [and by extension NERC's] proposal exceeds its jurisdiction by encompassing local distribution facilities that are not necessary for operating the interconnected transmission network." [FERC Order 743, ¶27.] In this regard FERC Order 743 states: At ¶37, Congress specifically exempted "facilities used in the local distribution of electric energy" from the definition. ... Determining where the line between "transmission" and "local distribution" lies, which includes an inquiry into which lower voltage "transmission" facilities are necessary to operate the interconnected transmission system, should be part of the exemption process the ERO develops. And at ¶39, To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system. And at ¶119. ... [W]e believe that it would be beneficial for the ERO in maintaining a list of exempted facilities.

to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track exemptions for radial facilities. [Emphasis added] Note that in ¶119 the Commission clearly distinguishes between “radial facilities” and “local distribution” just as it differentiates between jurisdictional radials and non-jurisdictional local distribution facilities in footnote 82: 82 As discussed further below, the Commission uses the term “exclusion” herein when discussing facilities expressly excluded by the statute (i.e., local distribution) and the term “exemption” when referring to the exemption process NERC will develop for use with facilities other than local distribution that may be exempted from compliance with the mandatory Reliability Standards for other reasons.

No

See comments to Question #1. In addition, we believe that there is a substantial need to provide Applicants greater clarity and improved transparency with regard to how their exception applications will be evaluated by Regional Entities and NERC. Absent some guidance we are concerned that Regional variances will arise during application of the Exception Process within the eight NERC regions. We, therefore, recommend that the RoP Drafting Team and/or the BES Standard Drafting Team develop an Applicant's and Evaluator's Guidance document to assist Applicants, Regional Entities, and NERC in preparing and evaluating exception applications. For example, the Federal Power Act provides Congress' vision for a reliable transmission system. Federal Power Act (FPA), Section 215, 824(o), Definitions states, (4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements. We recommend that NERC and the Regions specifically adopt this Congressional guidance, defining 'reliable operation,' as their overriding Technical Principles when evaluating Exception Process applications concerning jurisdictional Transmission Elements and facilities.

No

See comments to Question #1.

Group

Jonathan Hayes

No

We would like some clarification around how the panels are chosen to evaluate these requests. This would help in keeping the entire process consistent. In the list under section 4.5.2 we would request that there be templates suggested for these certifications. Leaving this open ended seems to not provide consistency.

Yes

High level process seems to be consistent.

Yes

Yes

Yes

Yes

In section 4.5.2 we would recommend that there be time added in the process to address the incomplete request and make it a complete request. We see where this is somewhat handled in the flow chart but want to make sure this is clear by reading the process. In section 5.2 we would request that there be more detail here outlining the actual substantive review process. We feel like this could be a subjective and not an objective review. We feel like the review should be focusing on the actual analysis and study of the elements under review. When talking about the review groups of three and the technical review groups of five the document doesn't address how the outcome of the review is handled. Is this a majority or unanimous rule? What happens if there is disagreement between these groups?

Individual

Rick Hansen

City of St. George

No

The process offers a good administrative process that includes due process and outlines expectations. However, the process seems to be potentially very long and cumbersome. It appears that it could easily take a year or more to get completely through the process. One concern is in section 1.1 (fourth paragraph) it states that the compliance obligations will be required based on the BES definition. The compliance obligations should be suspended in some form while the exception process is underway. This is especially of true for facilities or entities that are not currently registered. Otherwise an entity must spend time and money to comply with requirements that may not be needed if a

successful exemption is obtained. Some provision should be made for such facilities, especially during the initial implementation of the new definition.
No
The outlined process might be consistent as to following the steps however, without clear exception criteria to determine when a facility or entity is necessary for the reliable operation of the BES the results of the process may not be repeatable. The results of the process are the most important aspect to be considered. As presently written a lot is left up to the discretion of the Technical Review Panel, which will make the results hard to be repeatable based on the makeup of the various panels over time. Having each region with separate review panels will result in inconsistency between regions. Exception criteria that provides clear guidance and performance thresholds as to when an element should or should not be included in the BES is essential to both the entities as well as the review panels. Without the criteria the time requirements for the Technical Review Panel will be significant and will lead to inefficiencies, inconsistencies and will be difficult to verify.
No
As previously stated the process will be long and costly, especially for smaller entities. Again the basic process outlined will generally work, but without clear criteria detailing what can be legitimately excluded from the BES the process and definition together will make it difficult especially for smaller entities to obtain exceptions, even though the smaller entities are probably the most likely to have facilities that should potentially be excluded from the BES.
Yes
Yes
The process should allow for both multiple facilities and/or entities to be included in a single exception request (under a single "lead" entity exception request application) . This will improve the overall efficiency of the process.
Individual
Mark Conner
Tri-State G&T Assoc
No
The process is unduly complicated. It also lacks any detail on what basis elements may qualify for exclusion or inclusion while requiring such basis in to be provided by the applicant under section 4.5.2.6. Presumably specific evidence is necessary and sufficient to meet the requirement of 4.5.2.6 but no guidance on the form such evidence would take is ever given. This complexity and lack of specific direction strongly implies that the process is purposefully designed to discourage entities, to the maximum extent possible, from utilizing it.
No
Since the process lacks guidelines for what kinds of elements may or may not be candidates for exception, or what evidence is necessary to support an exception request, the process will necessarily be inconsistent and non-repeatable. The process as presented will not mitigate the inconsistencies the RE's have historically demonstrated in the interpretation of the existing BES definition and the subsequent applicability of standards.
Yes
To the extent that Canadian and/or Mexican authorities adopt the same process there will be consistency, however as noted in comments to question 2 the process as presented will be neither consistent nor repeatable.
No
As noted in question 1 the process is unduly complicated and it is completely unclear what elements if any may be candidates for exception or what evidence may form a sufficient basis for exception. The complexity and vagueness inherent in the process will strongly discourage smaller entities from utilizing it essentially resulting in a 'one size fits all' approach.
Yes
No
Individual
Michelle R D'Antuono
Ingleside Cogeneration LP
No
In most of the process, there is due process and clarity of expectations with a few exceptions. First, there is no hint as to the makeup of the Regional and NERC personnel that would make up the substantive review teams. A suggestion would be to include qualified representatives from NERC membership (peer review by Subject Matter Experts(SMEs)). Second, the makeup of the Technical Review Panels is not specified. Here again, it might be beneficial to include representatives (SMEs)from NERC membership. This is especially true for the regional substantive recommendation

review by the Technical Review Panel. Finally, Section 5.0 allows an open-ended time period for initial screening and/or for substantive review in the event a region is incapable of processing these in the period specified in Section 5.1.3 or 5.2.2 at the discretion of the region in consultation with NERC. This adds a great deal of uncertainty, although it does provide schedule flexibility for the Regional Entities. A suggestion is to have an outside limit for these reviews, after which the Exception Request would automatically be granted. This is less of a problem since the RoP Team has provided for implementation plans for meeting the compliance requirements should the Submitting Entity's Exception not be approved.

No

Consistency and repeatability might be achieved over time if the NERC reviewing team is properly composed and some general acceptance guidelines are provided or can be developed over time, but this detail is not provided in the proposed Appendix 5C process. For example, a general guideline for the RE and NERC substantive review for generation item #4 in the Detailed Information to Support an Exception Request might be: does the loss of the generation CAUSE voltage or frequency excursions on the transmission system that violate SOL under normal or N-1 conditions? As an alternative, as the RoP team has discussed, the team needs to direct REs and NERC to develop and publish such acceptance guidelines over time based on the results (conclusions) of these substantive reviews. This guarantee of development and disclosure of approval guidelines over time might inspire some confidence in the process by stakeholders.

Yes

The proposed Detailed Information to Support an Exception Request allows the Submitting Entity to provide as much or as little information as that Entity determines is required. This solves most problems with "one-size-fits-all." However, there is a lack of guidelines on what would be acceptable. We understand that this is a problem that was considered by the BES SDT (with the solution that, if guidelines could be given, they would be part of the BES Definition itself), but still leaves a significant amount of uncertainty for Submitting Entities. A suggestion would be for the BES SDT and the BES RoP teams to discuss this together to see if a resolution is possible.

Yes

This two step (minimum) comment process should be adopted by NERC for all substantive changes to the Rules of Procedure. We request that the RoP team make this suggestion part of their presentation to the BOT.

Yes

In many cases, the "Detailed Information to Support an Exception Request" requires significant "studies" to be performed. It is unlikely that independent generators, in particular, will have the appropriate, approved base case data/models to perform the required studies accurately. Although these studies can be done by outside vendors, there may be problems with accuracy. There are also some confidentiality and security problems with data sharing. Most of the regions probably already have confidentiality and security agreements available for data and study results sharing. However, access to the proper data and base case study results needs to be assured. The most likely place to for this assurance is in RoP Appendix 5C rather than in the Application.

Individual

David Proebstel

Clallam County PUD No.1

Yes

Public Utility District No. 1 of Clallam County, Washington ("CLPD") agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required an RE or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, CLPD believes the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete

substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows:

5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which

Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually."

4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, CLPD believes it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, Clallam agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is

carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it begs the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

We agree that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

We believe the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally:

1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in

different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve

that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. Clallam believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

CLPD respectfully submits the following additional comments: 1. Amendment Process. Clallam views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, Clallam believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under

the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) (“Order No. 743 directed the ERO to revised the definition of “bulk electric system” through the NERC Standards Development Process” (emph. added)).

2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions.

3. We are concerned that the Section 2.12, which defines “Exception Request Form,” imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the “provided” clause to read: “provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area.”

4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing “notice” of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term “Recommendation,” with no reference to “notice.” Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections.

5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information.

6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team’s rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element.

7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE “may engage in further discussions concerning possible revisions to the Exception Request.” Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.”

8. We are also concerned that the appeal process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation.

9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to “Owner/ Operator” in the text of the Procedures, as

opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: SubmittingEntity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Robert Ganley

Long Island Power Authority

Yes

Section 11.2 and Section 11.3 relates to Termination of an Approved Exception. Section 11.2 states that submitting entities shall notify the regional entity within 90 days of learning of any change of condition which would affect the basis of a NERC decision on an exception request. Section 11.3 essentially states that a submitting entity would have to certify to the Regional Entity that the Exception remains valid. Such certification would be due approximately two (2) years after the Exception was approved and every two (2) years thereafter, as long as the Exception remains in effect. Given that an entity would have to provide notification of a change of condition affecting an exception within 90 days, it would seem that having to re-certify the basis for an exception every two years (to a degree consistent with footnote 4 in Section 11.3) is too frequent. A suggestion would be to increase the frequency of the certification to every 60 months (at least every 5 years). A frequency of 60 months (5 years) is consistent with NPCC's Annual Transmission Review process, where a Comprehensive Review is required at least every five years. Additionally, it is recommended that the document clarify the expectations of footnote 4 in Section 11.3 regarding certification. For example, is the expectation that a detailed study consistent with applicable NERC TPL Standard(s) be performed and submitted, or is the expectation that an entity provide a brief assessment based on its' judgment and existing /available studies?

Individual

Thad Ness

American Electric Power

Yes

Page 5 of flowchart: Second box on page 5 should use similar “and/or language” as contained in the later box which states “The NERC Team may require interviews or discussions with RE, SE (and Owner, if different from SE)”. If footnote #3 on page 2 is correct, is the appeal process even necessary? The acceptance of the package as “complete” should be more open-ended, and the entity should be provided sufficient opportunity to provide additional information, without the need for an appeal process. Footnote 6 on page 6 – which appeal is this in reference to? Can NERC create a timeframe for when we are to begin an appeal with FERC? Is there an additional appeal here that is not being illustrated? If the step “BOTCC reviews the panel decision” takes greater than 90 days, is the process restarted? If so, there should be a decision box added which would take you back somewhere earlier in the process. Additional clarity is needed. The subtitle on page 6 section 9 needs to be more in line with the most recent changes in the ROP document, especially in regard to the appeal process versus the review process. It appears that some parts of the proposed process have not been fully realized in the flowchart. AEP looks forward to further reviewing the flowchart as further progress is made.

Individual

David Kiguel

Hydro One Networks Inc.

Yes

No

We believe that there is significant gap and a lack of transparency on how the exception applications will be evaluated and processed. We strongly suggest that the drafting team develops a reference/guidance document in order to assist Registered Entities, Regional Entities, and the ERO on how and on what basis an exception application would/should be processed.

Yes

Yes

No

Please see our comment in Question # 2

Yes

Sections 4.5.3 and 4.6, discuss the disclosure of confidential information mandated by or under the rules, laws, or acts within US. We suggest that similarly appropriate language be used for clarity or adequate provisions be provided to include other jurisdictions, such as Canada.

Individual

Russ Schneider

Flathead Electric Co-op

Yes

We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. However, We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests and we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC.

Yes

while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. A couple suggested changes: • We are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it begs the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that

two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

Yes

No

We believe the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally: 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential effects of a particular decision, so that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors participants are included in the Rules of Procedure. For example, federal courts generally require intervenors and amicus curiae to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors participants will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be wrapped upensnared in unproductive procedural arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or

electrical region of such entities. While it seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. Snohomish believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package

electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated at its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (180) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Group

Don Jones

No

The procedure should be streamlined to include only one stage for review by the regions. There is a concern that, because of the similarities between this procedure and the TFE procedure (initial screening acceptance or rejection and substantive review approval or disapproval), there will be an unnecessary administrative burden placed on the regions similar to that which was prevalent with the TFE procedure. The procedure should not be divided between initial screening and substantive review stages. Many of those involved with the administration of TFEs have explained that there was no value in dividing the process as such, and they also indicated that documenting, tracking and the reporting between the two stages was challenging (notices, multiple requests for the different stages, deadlines for responses, etc.).

Yes

1. It is not clear whether the Technical Review Panel described in Section 5.3 is to be comprised solely of individuals who are not part of the Regional Entity staff, or whether the Panel may include Regional Entity staff members. May a Technical Review Panel be made up entirely of Regional Entity staff members? 2. The procedure should provide flexibility for the regions in connection with the technical review panel. The requirement to have the regions establish a technical review panel of at least five individuals is overly prescriptive and may not be feasible depending on the regions' resources. 3. A Regional Entity might not have individuals on staff that are both technically qualified and permitted to review Classified National Security Information or NRC Safeguards Information (Eligible Reviewer). How will an exception request be handled if it involves classified information that the Regional Entity staff is not qualified to review? 4. The functional entity type "Planning Coordinator" (PC) is used in the current Functional Model, rather than the former term Planning Authority (PA). All references to PA should be changed to PC. 5. Consider whether Generator Owners (GO) should be included where various types of functional entities are listed, such as in Sections 1.1, 4.5.1, 4.5.2 and 4.5.4. 6. Regarding RoP Section 1703: In ¶ 2, we suggest adding "applicable" before "Regional Entity" (in two places). 7. Regarding RoP Section 1703: NERC should be permitted to appeal from an adverse decision of the "standing panel," and the language in ¶ 4 should be revised to acknowledge that scenario. For example, if an Owner is denied an exception by NERC, but then is granted the exception by the standing panel, NERC should have the right to appeal the decision of the panel to the BOTCC pursuant to ¶ 4. (NERC should not be allowed to appeal the BOTCC decision.)

Individual

Andy Puszta
atc
Yes
No
See responses to Question #6 where the process may need additional clarification.
No
See responses to Question #6 where the process may need additional clarification.
Yes
Yes
Please refer to ATC's editorial comments on Appendix 5C Redline in WORD format submitted to NERC at the following email address: ROPcomments@nerc.net . Specific Comments addressing concerns to Appendix 5C are below: • Add a header to the new Appendix 5C - APPENDIX 5C TO THE RULES OF PROCEDURE • Section 2.0 - For consistency of recent ROP Proposed Changes posted 9/2/11, all definitions are to be included or moved to the NEW Appendix 2 of the ROPs. Also, please note that there are a number of Acronyms inserted to the Definitions Section 2.0 that are not definition. They should only need to be spelled out in the Appendix sections as they are introduced. ATC recommends that acronyms be deleted from the definitions. • Section 4.1 of Appendix 5C new 2nd paragraph reads as follows: With respect to an Element that crosses a boundary between Regional Entities, (1) the Submitting Entity will submit the Exception Request to both (or all) Regional Entities, which will cooperate to process the Exception Request pursuant to section 5.1 below, or (2) the Regional Entities must jointly submit an Exception Request to NERC (neither Regional Entity shall be allowed to submit such Exception Request unilaterally). Comment: ATC is concerned that the process above is complex and not easily workable in the timeframe allowed. What happens when one of the parties disagrees or will not cooperate in the submittal? • Section 4.24.3. Withdrawal of an Exception Request reads: A Submitting Entity may withdraw an Exception Request at any time prior to NERC Approval or disapproval of the Exception Request. Comment: This does not provide enough guidance on the procedure to withdraw an Exception Request. (What and how and to whom?) • Section 5.2.3 - Substantive Review of Exception Request Comment: What is the timeframe for issuing the Recommendation to NERC after the substantive review?
Individual
John Seelke
PSEG Services Corporation
No
1. Appendix 5C has the following statement in the last sentence of the penultimate paragraph on page 1: "An entity that is planning a connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element." We suggest that "commercial operation" be changed to "BES synchronization." The Element will be subject to NERC's standards upon synchronization. During the period prior to commercial operation, an Element may be synchronized and tested to ensure that it meets the buyer's acceptance requirements for the Element to attain "commercial operation," a term that is usually defined in the contract between the buyer and seller of the Element. To avoid confusion on the Elements status during pre-commercial operation testing with regard to the application of NERC's standards, this change is recommended. 2. Appendix 5C, Section 4.1 has NERC perform the Regional Entity's duties when the Regional Entity is the Submitting Entity. By substituting NERC for Regional Entities in this situation, NERC is on both sides of an Exception Request. NERC would rule in Section 7.0 on what would be a NERC, rather than a Regional Entity, rejection. It would rule on ultimate approval or disapproval of an Exception Request in Section 8.0 that would include a separate NERC, rather than Regional Entity, recommendation. This conflict is untenable. 3. To eliminate the conflict, we suggest that both Section 7.0 and Section 8.0 be rewritten to require an independent NERC panel comprised of experts by appointment. The panel should be appointed by the collective executive committees of the three NERC technical committees (Critical Infrastructure Protection Committee (CIPC), Operating Committee (OC), and Planning Committee (PC)) who would sit as an Expert Appointment Panel. This panel would appoint experts that are appropriate to each Exception Request; for example, if no CIPC issue was contained in the Exception Request, no CIPC expert would be appointed to the panel. The experts appointed by the Expert Appointment Panel for a particular Exception Request would address the tasks now assigned to NERC in Sections 7.0 and 8.0 for all Exception Requests, not just those initiated by a Regional Entity. The criteria for appointing experts should be limited to three qualifications: (i) they must possess the necessary technical expertise for the Exception Request, (ii) they must have no conflict(s) of interest, including a financial interest, in the outcome, and (iii) they must sign a confidentiality agreement appropriate to the Exception Request. For example, if there are 10 Exception Requests active, there would be 10 NERC Exception Request Panels appointed. Qualified experts may serve on multiple panels provided they meet qualification criteria. NERC staff would facilitate this process, but separate NERC staff could be appointed to NERC Exception Request Panel based upon their expertise. Also, the NERC panel would be recommending approval or disapproval to the NERC Board of Trustees, who would have final decision authority. This is a change from the team's proposed ROP changes. 4. The format for Regional Entity involvement as

proposed is also questioned. Like the NERC process described above, similar Regional experts could be appointed by the leadership of Regional technical committees. The members of these panels would meet the same criteria described above. [The selection criteria in ROP Section 403, Subsection 7, are not appropriate – for example, they require auditor training (not relevant).] Regional Entity staff would facilitate the process, but separate Regional Staff could be appointed to Regional Exception Request Panel based upon their expertise. 5. The changes described above would leave the Regional recommendations and the NERC recommendations with technical experts, as it should be. A Regional Entity staff member and NERC staff member would serve as each panel's secretary, thereby providing an important facilitation and administrative function. They would not be a voting member of the panel. 6. If the NERC panel rejects or modifies the Regional panel's recommendation, it should be required to clearly state why it has done so, and the Regional panel should be allowed time to respond. This would provide the NERC Board of Trustees the best information with regard to approving or denying an Exception Request. 7. We do not see the benefit of ROP section 1703 as written. We believe that the Board of Trustees should formally approve, disapprove, or modify the NERC panel's recommendation for Exception Requests. They should not act as an appeals body simply because any Exception Request would have had two expert panel reviews before coming to them – one at the Regional level and one at the NERC level. If the Submitting Party is dissatisfied with the outcome after Board action, they should appeal the Board's decision to the Applicable Governmental Authority(ies). 8. Finally, while the expert Regional and NERC panels described above resolve the conflict raised in item 1 above, we question why a Regional Entity should even be permitted to submit Exception Requests. Other than Owners, Appendix 5C allows those Registered Entities (PA, RC, TOP, TP, and BA) that are specifically responsible for operations and planning of the Bulk Electric System to submit Exemption Requests. This is totally appropriate, and these Registered Entities actions or inactions regarding Exemption Requests are part of their reliability-related functions. The "Scope of Responsibility" defined in Appendix 5C includes both the functions and the geographic or electrical region of the five Registered Entities that may submit Exception Requests. A Regional Entity has no functions in the Scope of Responsibility; it only has a Regional Entity Region. While it is appropriate for the Registered Entities to submit Exception Requests, the Regional Entities functions cannot be expanded beyond what is permitted by 18 C.F.R. § 39.8. They are not accountable like Registered Entities for reliability, and their delegation agreements assign them only administrative duties. Appendix 5C expands the Regional Entity functions beyond its statutory boundaries, notwithstanding the fact that the present definition of BES, the Statement of Compliance Registry Criteria (Revision 5), and Order 693 have temporarily provided Regional Entity discretion in the current BES definition.

No

The largest consistency concern is the Eastern Interconnection, with its six Regions. Since the Submitting Entity is to perform analysis using Interconnection-wide models (see the sample form, Section III), more consistent decisions would be developed if Eastern Interconnection expert panels were formed for Eastern Interconnection Exception Requests in lieu of Regional panels. This change would eliminate cross-border issues, and it would provide a larger expert talent pool per Exception Request. The Eastern Interconnection panel of experts should include expert(s) from each Region if possible.

No

See the comments provided to question 2 above.

Yes

However, the proposed amendments are unacceptable for the reasons cited in the comments herein.

No

With regard to the Owner of an Element, some Elements may be jointly owned. While the Section 2.21 definition of Owner anticipates multiple owners ("The owner(s) of the Element or Elements ...), section II of the sample form asks for contact information from only one entity. That section should be made into a table so that the contact information of all owners is obtained. All Owners should have the right to submit comments individually.

Yes

We have three comments/questions. 1. The team did not consider the possibility of near-in-time Exception Requests that might impact one another. For example, if two entities submit near-in-time Exception Requests in the same Interconnection, would the first request require resolution before the second request could even be considered? 2. How would Elements that are approved for exclusion from the BES definition be treated from a modeling perspective? For example, would contingencies on excluded Elements be performed to determine if they impacted BES requirements? Would this be a requirement for their continued exclusion? 3. Could an approved Exception Request be terminated to approve a different Exception Request?

Individual

Barbara Kedrowski

Wisconsin Electric Power Company

Empty table rows for additional information.

Yes
Will NERC maintain a public list of those elements granted an exception? This is probably needed. Industry may also benefit from a more detailed list including why exceptions were/were not granted. Section 9 of BES Exception Process should include notifying the BA, TP, TOP, RC and PA when the owner is notified of the decision.
Individual
Joe Petaski
Manitoba Hydro
No
The proposed amendments do not represent an efficient process nor do they provide for due process and clarity of expectations. -Effective and Efficient Reliability Administration: The exception process will be extremely resource intensive, particularly in the absence of any qualifying criteria or thresholds to filter exception requests. Properly administering the process and monitoring approved exceptions to ensure that they remain feasible will occupy a wealth of Industry, NERC and Regional Entity time to the detriment of reliability. In addition, Manitoba Hydro questions the efficiency and purpose of the Regional Entity technical review panel given that a completely separate technical review panel at NERC will be making independent decisions on exceptions. -Due Process: The proposed exception process does not provide due process. There is no opportunity for impacted entities, such as transmission operators/ owners that are interconnected with the Submitting Entity, to raise concerns about an application for exception. Section 5.1 should be revised to require service of the Application on interconnected owner/ operators, Section 5.4 should be revised to allow a response to the Application from interconnected owner/ operators, and the appeal provisions should also be revised accordingly. -Clarity of Expectations: Without clear, industry approved criteria for determining whether an element is necessary for reliability, we are concerned that exception determinations will be subjective and therefore will vary from case to case with the particular staff examining the request. The end result is a process that does not provide clarity of expectations is not repeatable or verifiable.
No
As stated in our response to Question 1, without clear, industry approved criteria for determining whether an element is necessary for reliability, we are concerned that exception determinations will be subjective and therefore will vary from case to case with the particular staff examining the request. The end result is a process that is not repeatable or verifiable.
No
No, the process does not provide consistent treatment of transmission lines across international borders (nor can it from a legal perspective). Section 1.2 purports to allow deviations by Applicable Government Authorities (AGA) in Canada even if Canadian governing legislation does not grant the AGA statutory authority to modify a NERC Rules of Procedure or approve deviations from the definition of the Bulk Power System. NERC Rules of Procedure are only binding on AGAs (as opposed to Canadian NERC members) to the extent adopted in Canadian legislation or MOUs with the AGA. Accordingly, as commented previously by MH, the first sentence of Section 1.2 and footnote 2 should be deleted in their entirety. Manitoba Hydro also notes that the process does not support a consistent treatment of transmission lines that cross RC and BA boundaries.
No
The goal to eliminate a 'one size fits all approach' is contradictory to the original BES project purpose to provide continent-wide consistency in the application of the BES definition.
No
Changes made in the ROP are not voted on by industry members and there is no requirement for Drafting Team members to respond to each comment received during commenting periods. Without a vote, the Drafting Team can only presume the industry support for the changes made. Without a response to each comment received, industry concerns can be left unacknowledged without justification. Not all of Manitoba Hydro's comments in the 1st commenting period were addressed in the proposed amendments or in the summary 'consideration of comments' prepared by the Drafting Team.
The exception process is unnecessary as the core BES definition and associated inclusions and exceptions sufficiently cover all elements and situations. However, if an exception process must be adopted, MH believes that "exceptions" to the BES definition should be approved by industry through registered entities' proposing modifications to the BES definition using the existing Standards Development Process.
Individual
Bud Tracy
Blachly-Lane Electric Cooperative
Yes
The Blachly-Lane Electric Cooperative (BLEC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team

has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement:

1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.
2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p.

1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity’s registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team’s inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team’s effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): “Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually.”

4. As to the “clarity of expectations,” we recognize that, when considering the ROP Team’s efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE’s recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-

person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, BLEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

BLEC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant

information that does not fit within the pre-defined categories.

No

BLEC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to

each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element.” Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information (“CEII”) under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, “Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;” and, (b) in Section 4.5.3, “The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.” These sentences should be replaced with the following: “All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers.” We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC’s effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the ROP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the ROP Team follow the WECC Task Force’s lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase “which would be lost.” This should be rephrased to reference “protected status would be lost,” because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be

easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

BLEC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference.

and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Roger Meader

Coos-Curry Electric Cooperative

Yes

The Coos-Curry Electric Cooperative (CCEC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement:

1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the

IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity’s registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team’s inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team’s effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): “Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually.” 4. As to the “clarity of expectations,” we recognize that, when considering the ROP Team’s efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE’s recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2)

requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, CCEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

CCEC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

CCEC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants

should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless

it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

CCEC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES

Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)).

2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions.
3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area."
4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections.
5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information.
6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element.
7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission."
8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team

should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Saurabh Saksena

National Grid

Yes

Yes

Yes

Yes

In the Supporting Materials to Draft 2, the BES ROP Team has provided a set of Flow Charts. We would like to have more clarity on how these flow charts should be used. Since they are not directly referenced, we are not sure whether they show the formal process or whether they provide a suggestion on how to interpret the process flow. If they are meant to be a part of the formal Exception Process, we would suggest that they are incorporated or formally referenced in the ROP document, and it is clarified what should prevail if there is a difference in interpretations provided by the text and in the flow chart in the ROP document. Under Item #9 in the BES ROP Team's Consideration of Comments on the NERC ROP Appendix 5C BES Exception Process — Project 2017-10, the BES ROP Team states it feels that compliance would remain 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. We also agree with the BES ROP Team that it is

beneficial to avoid including steps that could result in additional uncertainty and possibly unnecessary compliance expense, especially for Submitting Entities that request exclusion of an included Element. We would, with reference to the above referred context, like to reiterate that the implementation period in this draft is too short. The implementation period is a tool that can allow NERC to meet the Commission's directive while softening any resulting ratepayer impacts. Implementation can and should be staged in order to mitigate and even out rate increases. National Grid suggests that the implementation period be flexible to allow entities who anticipate that large and/or expensive upgrades to the BES will be necessary to meet compliance can submit an alternate implementation plan to spread compliance and the associated rate changes over a longer period; we would suggest a minimum of 7 years. This time period was also recognized as a reasonable implementation time period in the recent TPL-001-2 for those portions of the standard that would also result in plans that would require siting, permitting and construction activities.

Individual

Dave Hagen

Clearwater Power Company

Yes

The Clearwater Power Company (CPC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We urge the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed. 2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If

the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements

are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually.” 4. As to the “clarity of expectations,” we recognize that, when considering the ROP Team’s efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE’s recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, CPC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of

evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

CPC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

CPC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a “Scope of Responsibility” over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team’s concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of

the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a

category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

CPC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1

and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the

BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Roman Gillen

Consumers Power Inc.

Yes

The Consumers Power (CPI) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We urge the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed. 2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards. subject to the

implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for the these questions to be addresses under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation

of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, CPI agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an

Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”
Yes
We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.
Yes
CPI agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.
No
CPI believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a “Scope of Responsibility” over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team’s concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of “Scope of Responsibility” needs to be clarified. Proposed Section 4.5.1

requires the Submitting Entity to provide a copy of the its Exception Request to “each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility.” The proposed definition of “Scope of Responsibility,” in turn, includes the “registered functions of a PA, RC, TOP, TP or BA” as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the “registered functions” of such entities could be easily identified and whether the Elements subject to an Exception Request is within “registered functions” of the Entity. We suggest that the reference to “registered functions” in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: “. . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element.” Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information (“CEII”) under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, “Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;” and, (b) in Section 4.5.3, “The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.” These sentences should be replaced with the following: “All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers.” We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC’s effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force’s lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase “which would be lost.” This should be rephrased to reference “protected status would be lost,” because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception

Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated at their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

CPI respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover

the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE “may engage in further discussions concerning possible revisions to the Exception Request.” Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.” 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to “Owner/ Operator” in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to “Owner” in the text of the Procedures and then define “Owner” to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided “at any time prior to the Regional Entity issuing its Recommendation,” which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report “any change of condition” which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of “Material Change,” which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Dave Sabala

Douglas Electric Cooperative

Yes

The Douglas Electric Cooperative (DEC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We urge the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed. 2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its

facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually."

4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached. in which: (1)

a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, DEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

DEC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while

avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

DEC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While it seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "raistered functions" in the definition be deleted or clarified.

Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: “. . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element.” Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information (“CEII”) under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, “Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;” and, (b) in Section 4.5.3, “The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.” These sentences should be replaced with the following: “All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers.” We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC’s effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force’s lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase “which would be lost.” This should be rephrased to reference “protected status would be lost,” because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d)

the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

DEC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the

Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.” 8. We are also concerned that the appeal process does not clear define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to “Owner/ Operator” in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to “Owner” in the text of the Procedures and then define “Owner” to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided “at any time prior to the Regional Entity issuing its Recommendation,” which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report “any change of condition” which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of “Material Change,” which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Bryan Case

Fall River Rural Electric Cooperative

Yes

The Fall River Rural Electric Cooperative (FALL) agrees generally that the Rules of Procedure Team (“ROP Team”) has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion

Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement:

1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.
2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained

concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity’s registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team’s inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team’s effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): “Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually.”

4. As to the “clarity of expectations,” we recognize that, when considering the ROP Team’s efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE’s recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft

Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, FALL agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

FALL agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

FALL believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While it seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the

subject Element.” Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information (“CEII”) under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, “Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;” and, (b) in Section 4.5.3, “The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.” These sentences should be replaced with the following: “All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers.” We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC’s effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force’s lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase “which would be lost.” This should be rephrased to reference “protected status would be lost,” because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It

is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

FALL respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revise the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing

of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Rick Crinklaw

Lane Electric Cooperative

Yes

The Lane Electric Cooperative (LEC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we

recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax

laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity’s registered functions, we believe it is appropriate for the these questions to be addresses under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team’s inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team’s effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): “Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually.” 4. As to the “clarity of expectations,” we recognize that, when considering the ROP Team’s efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE’s recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director

of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, LEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

LEC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

LEC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally.

1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe

government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following

sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

LEC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases

it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation

is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Ray Ellis

Lincoln Electric Cooperative

Yes

The Lincoln Electric Cooperative (Lincoln) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an

"objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We urge the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows:

5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a

mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, Lincoln agrees that the ROP Team has provided a mechanism that should be consistent.

repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

Lincoln agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

Lincoln believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in

any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the

Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the ROP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the ROP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

Lincoln respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of

Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) (“Order No. 743 directed the ERO to revised the definition of “bulk electric system” through the NERC Standards Development Process” (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines “Exception Request Form,” imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the “provided” clause to read: “provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area.” 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing “notice” of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term “Recommendation,” with no reference to “notice.” Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team’s rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE “may engage in further discussions concerning possible revisions to the Exception Request.” Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.” 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the

Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Anthony Jablonski

ReliabilityFirst

No

This process seems to be overly onerous, includes much more detail than may be needed, and does not appear to be efficient. It would seem this process could be streamlined if some of the multiple reviews would be removed. Is it necessary to have review by so many different groups including a comment period?

No

This process does not seem to be able to produce consistent or repeatable determinations because there are multiple review groups (i.e., RE and NERC staff and panels); and with changing panel memberships (there will be panel membership changes over time) and accompanying opinions, how can this promote consistency? Also, without uniform criteria as stated in the FERC Orders, it will be difficult to make consistent determinations (based on the arbitrary determination of a panel) across the ERO Enterprise.

Transmission lines that cross international borders are treated the same as any other Elements in this process.

No

It is not clear why a "one-size fits all" approach is not acceptable in a process such as this. Why does the process need to be tailored and for what aspects?

Yes

We agree that the process did allow commenters to raise concerns regarding the development of the new Rules of Procedure, Appendix 5c.

Yes

With review by four different groups (RE staff, RE panel, NERC staff, and NERC panel, plus possibly the NERC Board); this process seems overly onerous in which to navigate. This process should not be overly burdensome on the industry registered entities for submittal or the Regional Entities and NERC staff to administer and track, but appears to do just that with so many different levels of review and recommendations. We suggest streamlining this process by limiting the reviews to only one Regional Entity panel (as determined by the Regional Entity) and NERC Staff and deleting the comment period. In addition and in order to drive consistency on a continent-wide basis, exception criteria should be developed for use in this process.

Group

Brent Ingebrigtsen
Yes
<p>LG&E and KU Services (“LKE”) support NERC’s efforts to draft the BES Definition Exception process for elements of the BES. However, there are several aspects of the proposal that require further clarification. First, LKE agrees that “[d]uring the pendency of an Exception Request, the status of an Element(s) that is the subject of an Exception Request shall remain as it is determined based on application of the BES Definition,” however, the duration of the initial application and appeal processes requires that the applicability of an approved Exception extend back to the time the Exception Request was first properly filed. LKE also suggests that a final determination of non-compliance with respect to a facility for which an Exception Request has been filed not be issued until NERC and/or the RRO has finally denied that Exception Request. Second, Section 11.1 states that an Exception will be “subject to review.” LKE suggest that the Rules set forth when an Exception will be subject to review, how often, and by whom. Also, section 11.3 states that “[i]f such certification is not provided, the Exception is subject to termination ninety (90) days after the date the certification was due, and the Regional Entity shall send the Submitting Entity and NERC written notice of such termination.” LKE suggest clarifying when the Section 11.3 notice will be sent. Finally, LKE suggest that this Appendix to the Rules of Procedure be approved concurrent with the proposed BES definition revisions and the Detailed Information to Support BES Exceptions Request. The approvals for each should be procedurally tied together. These initiatives are all part of the broader effort to identify the correct elements that comprise the BES. Accordingly, each proposal must be evaluated within the context of the others.</p>
Individual
Kerry Wiedrich
Mission Valley Power
Yes
<p>Mission Valley Power (MVP) agrees generally that the Rules of Procedure Team (“ROP Team”) has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required an RE or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, MVP believes the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We recommend that the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we recommend that the ROP Team eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed. 2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictated by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required to WECC’s technical expertise under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC</p>

deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows:: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance, but would not require the full-blown effort and production of information involved in an Exception process. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for

these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, MVP believes it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, MVP agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be

necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it begs the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

We agree that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

We believe the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally:

1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential effects of a particular decision, so that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that

allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for participants are included in the Rules of Procedure. For example, federal courts generally require intervenors and amicus curiae to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by participants will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be wrapped up in unproductive procedural arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. MVP believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information

only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated at its level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

MVP respectfully submits the following additional comments: 1. Amendment Process. MVP views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, MVP believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). Accordingly, while we recognize that the Exception Process has been placed in the NERC Rules of Procedure, we believe that future changes to the Exception Process should be subject to additional procedural protections to ensure the kind of industry participation that has improved the Exception process developed by the ROP

Team. Specifically, future changes to the Exception process should require industry input, industry comments, and industry participation in the process of approving changes, such as a super-majority support requirement. 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. In addition, once bifurcation occurs, the process should include a "catch-up" provision, so that if one part of the recommendation is remanded to the RE and then corrected, the portion that is remanded and corrected should, if possible, be reunited with the remainder of the request, so that the entire request would then proceed on a uniform schedule. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the WECC. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that

supplementary information may be provided “at any time prior to the Regional Entity issuing its Recommendation,” which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report “any change of condition” which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of “Material Change,” which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Annie Terracciano

Northern Lights Inc.

Yes

The Northern Lights (NLI) agrees generally that the Rules of Procedure Team (“ROP Team”) has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed. 2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years. and

perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which

standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, NLI agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be

addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

NLI agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

NLI believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended

effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The ROP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While it seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES

Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

NLI respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are

concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for

the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Linda Jacobson

Farmington Electric Utility System

Yes

No

This is a general comment - A lot of the initial review process is dependent on the Regional Entities discretion with NERC completing the final review or appeals. It is unclear how NERC will ensure all the Regions initial application of the process will be clear. Potentially, after the initial phase of Exception Requests is reviewed by the regions and NERC, inconsistencies may be identified by NERC of for rejections and/or approvals. In addition, as the Regional Entities continue to apply the process, and lessons are learned, the process may change (like we see in other areas of enforcement and reliability.) Please note, this is a general comment and will be cleared with time. NERC should be cognizant of the concern and attempt to ensure it is repeatable and verifiable.

No

See comments to question 2.

Yes

Yes

Yes

Section 4.1, Owners or Regional Entities can submit an Exclusion Request. However, an Inclusion Request can be submitted by the owner, Regional Entities, PA, RC, TOP, TP, or BA's. FEUS can understand the limitation on limiting who can submit an Exclusion Request. However, FEUS can see limited circumstances when a GO, GOP, and potentially a DP, LSE may feel it necessary to submit an Inclusion Request if they are dependent on an element. Section 10.2a: newly-constructed or installed elements that are included within by application of the Definition of the BES should be required to be compliant before commercial operation if the element. If an Exception Request is pending or disapproved, commercial operation should be postponed until compliance is reached. It seems having the language as proposed in this section would automatically allow an Owner of a BES element to submit a BES Exception Request and therefore be allowed a substantial amount of time to be compliant, possibly putting reliability of the BES at risk. 11.3 – It would be preferred if the certification period aligned with the Registered Entities current self-certification period. This would be easier to manage for both the Registered Entities and Regional Entities.

Individual

David Gottula

Okanogan Electric Cooperative

Yes

The Okanogan Electric Cooperative (OEC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For

example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement:

1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.
2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an

Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for the these questions to be addresses under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through

establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, OEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

OEC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any

evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

OEC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the

Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate.

Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

OEC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We

are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Margaret Ryan

PNGC Power

Yes

The Pacific Northwest Generating Cooperative (PNGC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we

believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We urge the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the

BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity’s registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team’s inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team’s effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): “Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually.”

4. As to the “clarity of expectations,” we recognize that, when considering the ROP Team’s efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE’s recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a “standing panel” of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires

the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, PNGC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

PNGC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

PNGC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open,

transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to

participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the ROP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the ROP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

PNGC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission." 8. We are also concerned that the appeal process does not clear define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the

validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Heber Carpenter

Raft River Rural Electric Cooperative

Yes

The Raft River Rural Electric Cooperative (RAFT) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete

is initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We urge the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff

would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., *Cedar Creek Wind Energy, LLC*, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition.

3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually."

4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more

than ten days – since the Director’s duties in this regard are purely ministerial.

Yes

As a general matter, RAFT agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend: • As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability. • The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

RAFT agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

RAFT believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally. 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception

processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information."

These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

RAFT respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that

complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)).

2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions.
3. We are concerned that the Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area."
4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections.
5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information.
6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element.
7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: ". . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission."
8. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act ("FPA") for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process

should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Steve Eldrige

Umatilla Electric Cooperative

Yes

The Umatilla Electric Cooperative (UEC) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required a Regional Entity (RE) or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, we believe the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We urge the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline

(except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we urge the ROP Team to eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.

2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictating by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to, those suggested above. In addition, in

cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, we believe it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, UEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For

example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it does not fully answer the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

UEC agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

UEC believes the process proposed by the ROP Team needs to be improved in four particular ways to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally.

1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception

Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential affects of a particular decision, to that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for intervenors are included in the Rules of Procedure. For example, federal courts generally require intervenors to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by intervenors will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be ensnared in arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While it seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC

enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We believe it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated its their level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

UEC respectfully submits the following additional comments: 1. Amendment Process. We view the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, we believe that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition

in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) (“Order No. 743 directed the ERO to revised the definition of “bulk electric system” through the NERC Standards Development Process” (emph. added)).

2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions.

3. We are concerned that the Section 2.12, which defines “Exception Request Form,” imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the “provided” clause to read: “provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area.”

4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing “notice” of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term “Recommendation,” with no reference to “notice.” Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections.

5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information.

6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team’s rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element.

7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE “may engage in further discussions concerning possible revisions to the Exception Request.” Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.”

8. We are also concerned that the appeal process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of the REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation.

9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to “Owner/ Operator” in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to “Owner” in the text of the Procedures and then define “Owner” to include both the owner and operator of an Element.

10. Section 6.0 states that supplementary information

may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual

Bill Dearing

Grant County Public Utility District

Yes

Public Utility District No. 1 of Grant County, Washington ("GCPD") believes that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support the progress that has been made so far with the understanding that further clarification will be developed in Phase II of the project. Nonetheless, GCPD believes it is best to adopt the Exceptions Process with the modifications we suggest, understanding that additional essential supporting detail to be developed during the next phase. We have the following suggestions for improvement: 1. We are concerned that the lack of required deadlines for responses by parties may lead to long delays in processing Exceptions Requests. 2. As a consequence of the above, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. The appeals process, if all steps are needed, could take years to complete which reduces the value of the process. If the appeal concerns the removal of an element from the BES, the Entity should not be subject to sanctions from the time of the RE ruling to the time of reversal. 3. It would be in the best interest of the parties and the RE to develop a mechanism to provide informal guidance on questions of the implementation of standards. 4. Similar to the GO/TO work to date, and the recent NERC directive, there should be a procedure to delineate which standards apply to smaller LSEs and DPs. It would save time for the RE and the Entity to know which standards will not apply at audit or for other compliance requirements. 5. We are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level, and that step should be eliminated.

Yes

As a general matter, Grant agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable. We are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. We are concerned that the review and results may not be available to evaluate for consistency because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some

specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
Yes
We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.
Yes
We agree that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we believe a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.
No
We believe the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally: 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. A decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. We believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for participants are included in the Rules of Procedure. 2. We suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. Grant believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible. Secrecy concerning NERC enforcement matters will undercut NERC's effectiveness as an enforcement entity. Limited information access will make it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: http://www.wecc.biz/Standards/Development/BES/default.aspx). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically.
Yes
GCPD respectfully submits the following additional comments: 1. We are concerned that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the

Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 4. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 5. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. We suggest the language be replaced by: "Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. " In addition, a definition for "Material Change" should be added as follows: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. 7. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals.

Individual

Donald E Nelson

Massachusetts Dept. of Public Utilities

No

The Massachusetts Department of Public Utilities ("MA DPU") appreciates the opportunity to provide comments on the proposed changes to NERC's Rules of Procedure ("ROP" or "Rules"). Massachusetts is the largest state by population and load in New England. It comprises 46% of both the region's population and electricity consumption. Generating plants located in Massachusetts represent 42% of New England's capacity and our capitol city, Boston, is the largest load center in the region. The MA DPU supports the comments filed today by the New England States Committee on Electricity ("NESCOE") and underscores those comments in this filing. While the drafting team made a number of improvements, the proposed Rules create a burdensome and redundant process that is likely to consume both time and resources in quasi-judicial proceedings. For example, there does not appear to be any need for substantive reviews of exceptions at both the Regional Entity and at NERC. If the technical review process at the Regional Entity level is sufficiently open, and if all parties (including the relevant state regulators) do not object to the Regional Entity's recommendation, there is no purpose served by having NERC conduct a second review. NERC should weigh in only when a stakeholder (including a state regulator) objects to the Regional Entity's determination. Similarly, two levels of appeals at NERC may not be necessary as currently proposed in Section 1703 of the ROP. Instead, the exceptions process should allow for thorough consideration at the Regional Entity level and prompt disposition of objections at NERC. The proposed re-certification process also adds layers of review that are unnecessary. NERC should rely on the reliability planning processes that FERC has established to raise issues in the future emerging from changing conditions. The Rules, as proposed, could also lead to unnecessary costs being passed to consumers if Owners are forced to incur significant compliance expenditures before all objections to the inclusion of a facility in the Bulk Electric System ("BES") are finally addressed. When there is no such objection pending, it is fair to require the responsible entity to develop and comply with an implementation schedule. Similarly, if the result of the Regional Entity's review is the inclusion of a facility in the BES, it is reasonable to require the development of such a schedule. However, when the Owner or an interested party seeks NERC's review of the classification, the Owner should not be faced with compliance expenditures and potential penalties until after NERC has made its final decision on the status of the facility. The MA DPU understands that there may be circumstances in which a delay in implementation creates system risk; the ROP could address this possibility by requiring an Owner to proceed on the submitted schedule when necessary to alleviate a threat to the transmission system. Section 10.1 should be clarified to provide that, except in those circumstances, an Owner will not be required to implement the proposed schedule so long as an objection to the inclusion is pending. Similarly, when a request for an exclusion has not yet been finally determined, NERC should not enforce implementation requirements (see section 10.2(a)). The MA DPU also believes that the process described in

the draft falls short because it does not provide a sufficient role for state regulators. In the comments submitted in response to question 5, below, the MA DPU offers some specific suggestions for improving this aspect of the process.

No

The MA DPU appreciates the drafting team's efforts to create a flexible and open review process. However, in at least one respect, the proposed Rules might unnecessarily hamstring the decision-maker, whether it is the Regional Entity or NERC. Specifically, Section 3.2 suggests that the Regional Entity would not be allowed to base a decision on a single piece of evidence even in the case where that evidence was overwhelmingly persuasive. The decision-maker should be allowed to review all the potentially meaningful information but should not be required to search the record for additional supporting facts when there is a dispositive fact or data set. The MA DPU suggests deleting the last sentence of section 3.2.

No

The MA DPU is concerned that the proposed Rules continues to exclude states from an opportunity to participate meaningfully in the exception process. Without state participation, the process will not address the full range of substantive concerns that may arise in any given case, and NERC will not have the benefit of the states' views. In its comments on the last posting of the ROP draft, NESCOE requested that states, at minimum, be provided (i) notice of an exception request, (ii) notice of the applicable Regional Entity's recommendation regarding such request, and (iii) an opportunity to review the exception related information and to submit comments to the Regional Entity during its review and, later, to NERC following the Regional Entity's recommendation. NESCOE additionally supported a more active role for ISO/RTOs, including timely notice of an exception request and the opportunity to express concerns about, or provide support for, such request. The MA DPU supported these requests. However, while the revised Rules now provide a greater role to planning authorities and other entities, states still do not have a role in the consideration of proposed exceptions. Following the comment period on the last posting of the ROP, the NERC BES Rules of Procedure Team ("ROP Team") determined: "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." "Consideration of Comments on the NERC ROP Appendix 5C BES Exception Process — Project 2017-10" at Response #6 (emphasis added), available at http://www.nerc.com/docs/standards/sar/Project_2010-17_BES_ROP_Consideration_of_Comments.pdf. This response overlooks the obvious. State regulatory authorities must first be made aware of the exception request before they can determine whether and to what extent to express concern or support a request. However, the Rules do not include any mechanism that would facilitate states' participation. This gap can be fixed by amending the Rules to ensure that relevant state regulatory authorities receive the same notice and access to information as Planning Authorities and other entities are provided in Sections 4.5.1 and 4.5.2. States should also have the same right to provide comment and input to the Regional Entity as those other entities have under section 5.4. Additionally, relevant states should be provided notice of a Regional Entity's recommendation pursuant to 5.2.3 and an opportunity to submit comments to NERC under section 8.0. States should also have the right to appeal a NERC determination under proposed rule 1703. The MA DPU is also concerned that the draft Rules continue to lack a mechanism for state regulatory authorities to obtain review of the status of an element. As a general matter, the MA DPU agrees with NESCOE that state personnel with CEII clearance should have access to the current list of elements classified as BES. However, even equipped with such information, states are not in a position to submit an exception request because they lack the information required for submission under the ROP. To ensure meaningful state participation, the ROP Team should incorporate into the Rules the following framework: (i) Upon request from a state, the Regional Entity should be required to undertake a review of the element or elements in question. If the Regional Entity determines that the classification is in error, the Regional Entity shall submit an exception request to NERC. (ii) States should be afforded an opportunity to file an appeal directly with NERC if the Regional Entity declines to file the exception request, or to seek NERC's review of the Regional Entity's classification of the element or elements in question. The amendments to the ROP improve the Rules by allowing Planning Authorities and other entities the limited ability to submit a request for inclusion of facilities in the BES. The MA DPU believes Planning Authorities should not be limited to initiating review of inclusions but should also be permitted to propose a possible exclusion.

No

Group

Steve Rueckert

Yes

With a well-defined set of technical criteria, this process represents a balance between efficiency and due process. It also provides clarity into the roles and responsibilities throughout the process. However; with the current, vague technical criteria (see WECC comments submitted on 10/07/11 on the Detailed Information to Support an Exception Request) and subjectivity of determinations, there are likely to be more disagreements about submittals, which could

result in a significant burden in Technical Review Panel meetings and appeals. The significant resources that may be required to effectively administer and make substantive determinations of individual Exception Requests under the technical exceptions process with little guidance or thresholds appears inconsistent with ERO and Regional initiatives to prioritize and focus resources on areas most essential to risks to the reliability of the BES. WECC's position is based on the following: • Priorities for Addressing Risks to the Reliability of the Bulk Power System Docket No. AD11-6-000 (Comments of NERC Following February 8, 2011 Technical Conference); • Statements of Gerry Cauley and John Q Anderson at the FERC Technical Conference, February 8, 2011; • Standards Prioritization Project; • Compliance Enforcement Initiative; • 2011 Risk Assessment of Reliability Performance; • Draft GO-TO Directive.

No

WECC recommends that the Technical Review Panel be established at the NERC level rather than the Regional level. Having the Technical Review Panel at the NERC level will ensure that the exceptions process results in consistent determinations across the regions. An additional issue is the potential inefficiency of each rejection of an Exception Request for missing or insufficient Required Information having to go through the Technical Review Panel. It is unclear what this step in the process is intended to achieve. WECC recommends that NERC clarify the purpose of this step and why such review will be considered necessary. WECC understands that it is difficult to establish a detailed technical criterion for the exceptions process, but is also concerned that allowing the regions to establish their own study criteria will lead to an inconsistent process across the regions. At a minimum, WECC recommends that NERC develop some prescriptive tests and performance criteria for the exceptions process analysis that will be applied across the regions, while reserving the development of performance thresholds and limits to the Regional Entities to ensure that those criteria reflect the unique systems of each region.

Yes

WECC supports NERC's efforts toward consistency across borders. However, WECC recommends that the Rules of Procedure reflect the varied jurisdictional circumstances in North America throughout the Rules of Procedure. This includes the discussion in footnote 2 on page 2 of how the Rules of Procedure recommend that jurisdictions outside of the United States address deviations from the NERC Rules of Procedure with respect to NERC BES principles and processes. WECC recommends that NERC ensure that the Rules of Procedure provisions are intended to encourage a cooperative and consistent approach in each jurisdiction in North America.

No

As these comments are associated with the Rules of Procedure, WECC believes that the process is appropriately a "one-size fits all" approach. WECC understands the concern with "one-size fits all" to be with respect to the technical exception criteria for determining whether an Element is a part of the BES. WECC continues to be concerned that the Detailed Information to Support an Exception Request (first balloted in October 2011) is so vague that the exceptions process and resulting determinations will necessarily be inconsistent across the regions.

Yes

Yes

WECC has additional comments as follows: • Definition 2.23 Recommendation: When defined and used in the exceptions process, it appears that the Regional Entity "Recommendation" could involve differing results for portions of an Exception Request for a single Element or set of similar Elements, and it is unclear how this would work for a single Element. WECC recommends that NERC clarify the "Recommendation" definition and its use within the exceptions process such that an Exception Request is either approved or disapproved as a whole. To allow a portion of the Exception Request to be approved adds the potential for confusion with respect to subsequent process and procedure, and could create confusion as to the resulting status of an Element. • In Section 4.2 it is not clear what is meant by the phrase "similar Elements" since the location of the Element and the neighboring Elements would affect the BES status of the Elements. It is also unclear for jointly filed Exception Requests whether one set of studies is sufficient for all entities or if each entity should include their individual study files. In addition, allowing multiple Submitting Entities to jointly file has a potential for confusion with regard to review, additional data submittals, notices, and BES status of Elements, if only a portion of the submittal is approved. WECC recommends that the filings be limited to single Submitting Entity. • Section 5.2.2 - WECC is concerned with how the Regional Entity (RE) and Submitting Entity (SE) will mutually agree to timelines and/or milestones to complete the substantive review of the Exception Request, and is concerned that this could lead to inconsistencies across the regions with respect to processing timelines. WECC is also concerned that if the RE and SE do not mutually agree to a timeline, then the RE will be bound by the original timeline of six months. WECC recommends that the RE and NERC develop the timelines and/or milestones for substantive review of the Exceptions Request rather than the SE and RE mutually agreeing to timelines and/or milestones.

Group

Louis Slade

Yes

Yes

Yes

Yes
Yes
Yes
Section 2.0 – Dominion does not agree with the practice of including definitions ‘for ease of reference’. Dominion is concerned that it may not be possible to keep defined terms current in multiple documents. Section 4.1 – Dominion is concerned with the last paragraph,. It is our experience the regional ‘boundary’ is usually drawn around the contiguous Elements of transmission owners who are members of that region. Given this, Elements belonging to other entities are typically assigned to the region where the transmission Element to which they interconnect resides. Likewise, an Element that crosses a regional boundary is typically an interconnection between transmission owners. Most often each of the transmission owners owns a portion of the interconnection and thus, that portion is assigned to the region where a majority of the contiguous Elements of that transmission owner is located. We believe this example, if indicative of the majority, indicates the need to further modify the Exception Request process. The way this paragraph currently reads, it appears that one owner could submit an Exception Request without agreement of the other and that the Submitting Entity would have to submit to multiple regions. Dominion suggests this paragraph be modified so that all owners would have to agree to the submittal of an Exception Request (whether for Inclusion or Exclusion) and, upon such agreement, would jointly file the Exception Request with their respective regions. This also calls into question the process cited in previous paragraphs as these appear to envision only one owner for each Element and appear to envision each Element only being within the scope of responsibility of one Regional Entity, PA, RC, TOP, TP, or BA. Dominion believes further modification may be necessary to insure that an Element, for which there is shared or joint ownership or which crosses Regional Entity, PA, RC, TOP, TP, or BA boundaries, affords all the opportunity to participate in the Exception Request process. Section 5.1.3 and other sections – Dominion would prefer ‘calendar’ not be deleted. Otherwise, there will be a request to further clarify the ‘x’ days. Is it calendar day, business day, etc. Sections 5.1.4, 5.1.5, - Dominion suggests replacing the paragraphs that read “...Exception Request is from an eligible (in accordance with Section 4.1) Submitting Entity for an Exception from the application of the terms of the BES Definition....” With paragraphs that read “...Exception Request is from an eligible Submitting Entity (in accordance with Section 4.1)...” Section 8.0 – For consistency change sentence that reads “By the end of the ninety-day review period, the team shall issue a decision on behalf of NERC....” to read “By the end of the ninety-day (90) review period, the team shall issue a decision on behalf of NERC....”
Individual
Sylvain Clermont
Hydro-Quebec TransEnergie
No
HQT believes that the process still needs simplification in order to be efficient. The whole process may take over 22 months to be concluded as shown by the flowcharts.
No
While the proposed process is repeatable, it is difficult to evaluate if the process will be verifiable because it will depend, for example, how the RE conducts its review of a Exception request. There is a very noticeable gap and lack of transparency on how the exception application will be evaluated and processed. HQT suggests the ROP team develop a reference/guidance document in order to assist Registered Entities, Regional Entities, and the ERO on how and on what basis an exception application would or should be processed.
No
HQT believes that the Procedure for requesting and receiving an exception from the application of the NERC definition of BES may not be applicable because of obligation to submit to Applicable Governmental Authorities in Canada. NERC will have to take into consideration that other procedures exist under Canadian jurisdiction which may be quite different from the one proposed. Also, HQT does not agree with footnote 2 in section 1.2 as it presumes automatic adherence of Canadian Authorities or the need for its procedure to be submitted to NERC. Instead, it will be necessary that NERC and Canadian Authorities, with Canadian Entities involved, exchange on this subject in order to come to common understanding of differences and come to some agreement. Those exchanges should aim to insure reliability across the boarder while respecting the proper jurisdiction. It could be done by addressing reliability in bulk power transfer within (intra) or between (inter) two Balancing Authority Areas, and monitored facilities included in an Interconnection Reliability Operating Limit (IROL). Other criteria must be left to the discretion of the applicable jurisdiction
No
As stated on other questions, HQT believes that the Procedure needs to be more efficient and that Applicable Governmental Authority in Canada may adopt different approaches or methodologies for addressing exception to the NERC BES definition
Yes

Yes
As stated in previous responses, the Procedure in the document in general, and specifically in the document's Section 1.3 footnote needs to be made more efficient, and that it needs to be recognized that Applicable Governmental Authorities in Canada may adopt different approaches or methodologies for addressing exceptions to the NERC BES definition. In addition, before implementing this process, NERC will have to ensure that they fit all Applicable Governmental Authorities frameworks as addressed in the proposed Section 1703 - Challenges to NERC Determinations of BES Exception Requests under ROP Section 509.
Group
David W. Taylor
Yes
Yes
Yes
Yes
Yes
Yes
Yes
Yes
With respect to the Proposed new Appendix 5C: Procedure for Requesting and Receiving An Exception From the Application of The NERC Definition of Bulk Electric System, we offer the following comments: 1. In section 1.2, second paragraph, everything after "with its own deviation" should be deleted. Footnote 2 should also be deleted. This text and footnote should be deleted because they are instructing Canadian and Mexican authorities on the content of their rules and procedures, which is inappropriate. In addition, the last clause in the first sentence of the second paragraph is presumptuous ("ensuring that there will be no adverse impact on the interconnected transmission system.") and should be deleted. 2. Section 4.6.2 should be revised as follows (add parenthetical): 4.6.2. If the Submitting Entity or Owner is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information shall only be reviewed by a representative or representatives of the Regional Entity (or of any PA, RC, TOP, TP or BA requesting access to the information), which may include contractors, who are Eligible Reviewers. This is to ensure that a PA, RC, TOP, TP or BA can obtain access to the protected information only through an Eligible Reviewer. 3. Sections 5.1.5(a), 5.1.5(b), 5.2.4, 5.3, 8.0 – These section provide for each Regional Entity to create a Technical Review Panel (5.3) and require that, before a Regional Entity may (i) reject (5.1.5(a)-(b)) or (ii) disapprove (5.2.4) an Exception Request, it must obtain an opinion from the Technical Review Panel and, if the Regional Entity decides to reject or disapprove the Exception Request, must provide a copy of the Technical Review Panel opinion to the Submitting Entity. NERC believes the Technical Review Panel represents an excessive and unnecessary level of review (the Procedure will otherwise provide for review of an Exception Request by the Regional Entity and by NERC), and should be deleted. If the Technical Review Panel provisions are not deleted completely, they should be reduced to eliminate the Technical Review Panel at the Regional Entity level but instead provide for a Technical Review Panel at the NERC level of the process – this may facilitate access to a broader base of qualified team members, and assist NERC in assuring uniformity of decisions on Exception Requests across all Regions. 4. Section 7.0 – The first sentence should be reworded as shown below: Where the Regional Entity has rejected an Exception Request that cannot be cured by the provision of additional Required Information and therefore would result in final disposition of the Exception Request, the Submitting Entity may submit to the NERC Director of Compliance Operations, with a copy to the Regional Entity and Owner if different, information that demonstrates that the insufficiencies in an Exception Request Form identified in the notice of Rejection by the Regional Entity pursuant to Section 5.1.5 are incorrect or otherwise do not warrant Rejection of the Exception Request, and that the Exception Request should be accepted and proceed to a substantive review. Without this revision, a Submitting Entity will be entitled to submit rejected Exception Requests to NERC even where the Rejection is due to incomplete or missing Required Information in the Exception Request. 5. Section 8.0: This section requires that NERC's review of an Exception Request must be conducted by "a team of three persons with the required technical background to evaluate Exception Requests." This provision should be deleted. NERC should have the management discretion as to how to staff its review of Exception Requests, and should not be mandated to have "a team of three persons." 6. Section 1.2, second paragraph – if the last clause of the first sentence is not deleted, it should be revised to be "so long as the deviation will not result in an adverse impact on the interconnected bulk transmission system" so as to be less presumptuous and consistent with other parts of the Procedure. 7. Footnote 2, if not deleted, needs a number of revisions: a. There is no footnote number in the footnote. b. The first line should say "A Canadian jurisdiction and Applicable Governmental Authority should adopt . . ." (tense agreement; use defined term) c. In the third line, "Cross Border RE" should be "Cross Border Regional Entity" (use of the acronym "RE" was deleted elsewhere). d. End of third

line, delete "the". e. In subsection (b), item (iii) does not follow structurally from (i) and (ii). The following rewrite is suggested: "(b) demonstrate and confirm that Elements or paths are not excluded as part of the Exception process that (i) transfer bulk power within (intra) or between (inter) two BAs, and (ii) are monitored Facilities included in an Interconnection Reliability Operating Limit, and that any excluded Element(s) are not necessary for the operation of the interconnected bulk transmission system." 8. Section 2.9 – "and" should be "an". 9. Definition of Required Information (on page 5) – this should be section 2.25 but there is no section number. 10. Section 4.1, fifth line – delete the space between "Entity" and the comma. 11. Section 4.2, fourth line – "seeks Exception" should be "seeks Exceptions". 12. Section 4.5.4, fifth line – "RE" should be "Regional Entity". 13. Section 4.5.4, seventh line – add comma after "Owner".
Individual
Eric Salisbury
Consumers Energy
No
Section 2.8 - We believe the definition should explicitly include the Owner as an Eligible Reviewer to ensure that the Owner has access to all evidence offered in the exception process. Section 4.5.2 - We would add, "and to the owner." at the end of item 5 after, "...by the Submitting Entity that it has sent copies of Sections I and II to each such entity." This would ensure that an Owner served with copies of Exception Requests affecting its facilities as required in Section 4.4. Section 4.5.4 - We believe the Owner should always be entitled to review all information regardless of whether the Regional Entity believes such review may assist the Regional Entity's review. Section 5.1.5 - We believe, "To the extent feasible," should be removed and the sentence midway through the paragraph should begin, "If an Exception Request Form is missing Required Information, the Regional Entity..." We don't understand why it should be "feasible" to allow it sometimes but not others. Section 6.0 - Should the following sentence be added to the end of the section, "Any supplementation provided pursuant to this section must also be submitted at the same time to the Regional Entity with copies to the Submitting Entity and the Owner, if different from the Submitting Entity." It appears that this may have just been missed here, as it is included numerous other times throughout this Appendix. Sections 10.1 and 10.2: We would add the following sentence, "If the Owner's implementation plan reflects good faith planning and commitment to assuring the reliability of the BES, the Owner's plan and schedule shall be accepted by the Regional Entity, unless doing so would involve significant risk to the BES." This would be added once in section 10.1 and twice in section 10.2 between, "The Regional Entity and Owner shall confer to agree upon such a schedule." and, "If the Regional Entity and Owner are unable to agree on the implementation plan,..." We would also add to "If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity Board or a Board-appointed committee shall specify a reasonable implementation schedule", the following, "and explain why the Owner's plan was not accepted. The Owner may appeal the Board's implementation plan and its rejection of the Owner's plan, following the procedures and time frames set out in Section 8.0 [and Section 9.0] above." This would also be added once in section 10.1 and twice in section 10.2.
Yes
Yes
Section 2.9 - Should read, "...or an Exclusion Exception." Section 11.0 - Should the recertification period be more than two years. It is currently listed as two years, but with the amount of documentation and time to be spent filing the recertification, it seems like this could be pretty burdensome.
Individual
Colin Anderson
Ontario Power Generation Inc.
Yes
Yes
The process seems consistent, repeatable and verifiable. A few numerical examples in a companion document would be very useful. The worked examples should contain cases of inclusion and exception of generators that do not meet the Statement of Compliance Registry Criteria.
N/A for OPG
Yes
Yes
Yes
OPG suggests the following amendment to the draft BES exception procedure section 5.2.1: "In the NPCC region

where the Regional Entity (RE) has applied an impact based methodology, for many years, the RE shall apply to NERC, on behalf of all impacted participants within the RE's geographic boundary for exceptions of equipment that was never found to be BPS elements. The RE shall use the annual analysis, which it has consistently used over the years, to justify such exceptions, consistent with Section III B of the "SAMPLE FORM: REQUEST FOR EXCEPTION TO THE BULK ELECTRIC SYSTEM DEFINITION."

Group

William Gallagher

TAPS applauds the work of the drafting team in developing the procedural rules to govern requests for exceptions from the BES definition. The proposal has many significant improvements over the last posting, and TAPS appreciates the drafting team's consideration of the comments that we filed on the proposed procedure on June 10, 2011. There remain a few areas where we believe that clarification or changes are needed. Our comments on the draft are presented in the order in which each issue first appears in the draft. The proposal describes the equipment that should be included in the BES with language that is similar but not identical to the language used by FERC in Orders 743 and 743-A. For example, the first paragraph of Section 1.1 refers to Elements that are "necessary for the Reliable Operation of the interconnected bulk transmission system." Similar language is used in Sections 3.1(a) and (b). To be clear that this procedure is complying with the FERC directive, such instances should be revised to track Order 743: "necessary for operating an interconnected electric transmission network." As TAPS suggested in its comments on June 10, 2011, consistent with the Organization Registration Procedure in Appendix 5A to the NERC Rules of Procedure, any entity should be permitted to recommend in writing, with supporting documentation, to the Regional Entity(ies) that an Element be included in or excluded from the BES. Copies of any such request should be sent to the affected owner(s) at the time the request is made. Third parties should not, however, be permitted to submit an Exception Request, which would trigger the beginning of the Exception Procedure. TAPS believes that its proposal will allow third parties to bring Elements to the attention of a Regional Entity as the third parties believe necessary, while avoiding the backlog that could result from giving third parties the power to start the Exception Procedure unilaterally. The draft procedure, including Sections 1.1 and 4.1, should be revised accordingly. This prohibition on third-party Exception Requests would of course not apply to agents (e.g. joint action agencies and consultants) designated by an owner to handle an exception request on the owner's behalf. If the drafting team nevertheless retains the possibility of third-party Exception Requests, it should also retain Section 4.1's limitation that "[o]nly a Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by an Owner that is not a Registered Entity." We support the drafting team's intent to limit that ability to Regional Entities, but ask that the language be clarified to expressly cover both entities not previously registered for any function as well as entities that as a result of the Exception Request would be registered for a functional category for which the Owner is not currently registered. The policy consideration supporting the current proposal—that new registration imposes significant new responsibilities on an entity, and the process should therefore be initiated only by the Regional Entity—applies whether or not the Owner is already registered for another function. For example, if approval of an Inclusion Exception Request would result in a currently registered Distribution Provider being required to register as a TO/TOP, only the Regional Entity should be permitted to submit the request. To clarify that this limitation of which entities may submit certain Exception Requests applies in any case where the Owner would be registered for a new function, not only where the Owner is currently unregistered for any function, we suggest the following: "Only a Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements whose inclusion in the BES would result in the Owner's registration for a function for which the Owner is not currently registered." Section 4.1 appropriately calls for NERC to review Exception Requests filed by a Regional Entity. The rest of the draft is currently written in terms of the review being performed by the Regional Entity, with Section 4.1 saying that for some purposes in this Appendix, "Regional Entity" means "NERC." To avoid confusion, it may be preferable to make "Reviewing Entity" (or a similar term) a defined term, and use that term rather than Regional Entity as appropriate in this Appendix. Section 5.0 proposes to allow Regional Entities to extend the time they will take to review Exception Requests "based on consultation with NERC." At minimum, the section needs to be revised to state the department or individual within NERC with whom the Regional Entity will consult; otherwise, in cases where NERC itself is performing the review, the NERC reviewing body may simply consult with itself, which would make the requirement meaningless. In addition, as TAPS stated in its June 10, 2011 comments, delaying action on Exception Requests is a serious matter that is likely to have significant impacts on the requestors; extending a Regional Entity's review time should therefore require permission from NERC, not simply consultation. NERC may grant such permission in the vast majority of cases, but NERC needs authority to prevent a Regional Entity from unreasonably delaying action. TAPS supports the addition of Technical Review Panel review of proposed rejections of Exception Requests. The new text at the end of Section 5.1.6, "based on the similarity of the evidence presented for the Exception Request," does not make sense in context and should be revised or deleted. TAPS supports the proposed changes to Section 5.2.2 to allow Regional Entities to extend the time to review a particular Exception Request only in extraordinary circumstances and only by agreement with the Submitting Entity (and Owner, if different). TAPS supports the proposed requirement in Section 5.2.4 of Technical Review Panel review

of a Regional Entity's proposal to recommend disapproval of an Exception Request. Because these decisions are likely to be highly technical in many cases, the Technical Review Panel should review all Regional Entity proposals to recommend approval or disapproval of Inclusion or Exclusion Exception Requests. At minimum, consistent with our suggestion above regarding Section 4.1, we suggest that Technical Review Panel review be required for any recommendation of the inclusion in the BES (i.e. disapproval of an Exclusion Exception Request or approval of an Inclusion Exception Request) of an Element or Elements whose inclusion in the BES would result in the Owner's registration for a function for which the Owner is not currently registered. TAPS supports the proposed change to Section 6.0 that supplementing an Exception Request may "reset" (as opposed to the previous draft's proposed "extend") the Regional Entity's review time. Section 7.0, describing appeals of the rejection of an Exception Request, states that such appeals can be submitted to the Director of Compliance Operations, but does not state which body or individual at NERC performs the review. The process should be clarified; for example, is it the drafting team's intent to use the same process as is set out in Section 9.0 for appeals of approval or disapproval of Exception Requests? The draft proposes, in Section 8.0, that NERC's review of an Exception Request be by a team of three persons with the required technical background. A three-member team of technically qualified individuals seems like an appropriate way to handle review of Exception Requests, but we cannot comment in support of or against the proposal without more information about the composition of the team. For example, would the members be NERC staff, impartial stakeholders, or a combination? By whom would they be appointed or selected, and on what terms? TAPS supports and appreciates the proposed addition to Section 8.0 that the NERC review team's decision "shall be based on the team's independent consideration of the full record." Sections 10.1 and 10.2 propose that implementation plans for newly included Elements, and Elements for which Exclusion Exceptions are denied or still pending, be by agreement between the Owner and the Regional Entity. Where the Owner and the Regional Entity cannot agree, the implementation schedule is set by the Regional Entity Board or a Board-appointed committee. To encourage consistency, NERC should provide guidelines for implementation schedules, such as the 24 months proposed by the BES Definition drafting team for the initial transition period, the 18 months suggested by FERC in Order 743, or (as a bare minimum) the six months included in NERC's Draft Directive regarding generator transmission leads. Section 11.0 would require NERC review of termination of an approved exception, but does not describe the process in detail; for example, it is not stated which body within NERC would perform the review. We suggest that the review and appeals processes be the same as those set out in Sections 8.0 and 9.0.

Group

Charles O'Hare

No

We believe the proposed amendments are taking us in the correct direction overall. However, we believe the 75 MVA limit on connected generation to be arbitrary. The limit of generation should be based on individual and/or joint studies of the affect the sudden and complete loss of specific generation facilities would have on the BES. If studies showing there is no affect to the BES or interconnected utilities from the sudden and complete loss of a generation facility of larger nameplate capacity then this facility should be allowed to be excluded. In our case, we have a hydroelectric facility which will be rated at 90 MVA when upgrades are completed. This facility is run-of-river with a capacity factor of approximately 30%. This facility is rarely operated at above 75 MVA and even when it is, our studies have shown there is no affect to interconnected utilities or the BES when there is a complete and sudden loss of this capacity. However, the exceptions definitions, as they are proposed, would require this facility to be included in the BES. This puts undue and unreasonable burdens on small utilities which have difficulty staffing positions required to administer requirements which result from being included in the definition of the BES.

Yes

Yes

No

See response to Question #1.

No

See response to question #1.

No

Individual

David Kahly

Kootenai Electric Cooperative

Yes

Kootenai Electric Cooperative of Hayden, Idaho ("KEC") agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process.

Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required an RE or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, KEC believes the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement:

1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will “typically” complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is “typical” or under what “atypical” circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an “alternative time period objective and work plan.” The word “objective” should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an “objective.” Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request “within six months of Acceptance.” We recommend the ROP Team to change this language to “no more than six months,” which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we recommend the ROP Team eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed.
2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictated by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum, approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required to WECC’s technical expertise under Section 215 of the Federal Power Act (“FPA”) for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE’s decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE’s decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows:: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner’s registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team’s decision to drop this mechanism because of its costs. However, we disagree with the ROP Team’s decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is “in or out” of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in

determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance, but would not require the full-blown effort and production of information involved in an Exception process. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. *Id.* at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for these questions to be addressed under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. KEC supports the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, KEC believes it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees

committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the “standing panel” under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director’s duties in this regard are purely administrative.

Yes

As a general matter, KEC agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team’s express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team’s approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) “No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved” should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no “single piece of evidence” should be dispositive, it begs the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: “Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation.”

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

We agree that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a

particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

We believe the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally: 1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the ROP Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and will also have other information on the potential effects of a particular decision, so that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for participants are included in the Rules of Procedure. For example, federal courts generally require intervenors and amicus curiae to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by participants will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The ROP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process. 2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be wrapped up in unproductive procedural arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While it seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the

Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element.” Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest. 3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information (“CEII”) under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, “Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;” and, (b) in Section 4.5.3, “The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.” These sentences should be replaced with the following: “All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers.” We believe all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC’s effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. KEC believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force’s lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase “which would be lost.” This should be rephrased to reference “protected status would be lost,” because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated at its level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed,

but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

KEC respectfully submits the following additional comments: 1. Amendment Process. KEC views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, KEC believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). Accordingly, while we recognize that the Exception Process has been placed in the NERC Rules of Procedure, we believe that future changes to the Exception Process should be subject to additional procedural protections to ensure the kind of industry participation that has improved the Exception process developed by the ROP Team. Specifically, future changes to the Exception process should require industry input, industry comments, and industry participation in the process of approving changes, such as a super-majority support requirement. 2. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets the need for dispute resolution at the RE level and we therefore support these provisions. 3. We are concerned that Section 2.12, which defines "Exception Request Form," imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the "provided" clause to read: "provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area." 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing "notice" of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term "Recommendation," with no reference to "notice." Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team's rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. In addition, once bifurcation occurs, the process should include a "catch-up" provision, so that if one part of the recommendation is remanded to the RE and then corrected, the portion that is remanded and corrected should, if possible, be reunited with the remainder of the request, so that the entire request would then proceed on a uniform schedule. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE "may engage in further discussions concerning possible revisions to the Exception Request." Although it is not entirely clear what is intended

by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.” 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of the WECC. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to “Owner/ Operator” in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to “Owner” in the text of the Procedures and then define “Owner” to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided “at any time prior to the Regional Entity issuing its Recommendation,” which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report “any change of condition” which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of “Material Change,” which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Individual
Brian Evans-Mongeon
Utility Services, Inc..
Yes
Yes

No
We are uncertain that the process will achieve the desired result. Given the regulatory structures on the other sides of the border from the US is different and that the MOU between the regions the respective entities contain contrasting dynamics for operations and integration, we cannot be assured that that dynamics will play in the same manner. There are also jurisdictional questions that may require modifications to the ROP in order to achieve a substantial parity. Based upon the information provided, Utility Services cannot tell if the treatment will be consistent and uniform.
Yes
Utility Services cannot be certain of this but feels that the approach is a very reasonable starting point.
Yes
With regarding to the Implementation Plan, paragraphs 131 and 132 of FERC Order No. 743 can be read to require Registered Entities to have to provide to the Regions certain information on the assets and steps necessary to meeting the January 2012 filing deadline. Given the unapproved nature of the definition and the ROP process won't be decided prior to the deadline, Utility Services does not see how the entities can provide the Regions with their individual information and we don't see how the REgions can provide it in the filing. We would like to suggest to NERC that they seek an out-of-time clarificaion from FERC on how its expects the filing to address the needs as directed in these aforementioned paragraphs.
Group
William Bush
No
The exception process is an improvement over the status quo, but the amendments require additional work. Holland BPW submitted comments on the BES definition and the Exception process in Project No. 2010-17 and incorporates those comments here. In addition, Holland BPW provides the following comments: 1. A party seeking an exception should not face the burden of compliance during the exception process. NERC and the RE should be required to consider a stay of the compliance requirements or a reduced compliance burden during the exception process. Those parties seeking an exception are arguably those systems that do not have a material impact the Bulk Electric System or are not necessary for the reliable operation of the transmission network. Thus, there is no clear and convincing reason for requiring such an entity to comply with standards during the very lengthy exception process. This is particularly important considering the timeframe for seeking an exception could take nearly two years (The timeframes according to the flow chart attached to the 1703 announcement include a 14 month period for the exceptions process and an 8 month period for the appeals process.) This is even before the aggrieved party gets to FERC and the Courts of Appeal. This is not efficient or effective administration and is a denial of due process to the aggrieved party. 2. The timing of the exceptions process should be reduced from the proposed time frame of 14+ months to 4-6 months from the date of submittal to the date a decision is rendered. Likewise, the timing of the appeals process at NERC should be reduced from the proposed 8 month process to 3-4 months.
No
The concern about "one size fits all" stems, in part, from the RE refusing to consider a risk-based approach when evaluating the compliance burden placed on an entity that poses to no material risk to the BES. To date, an entity that seeks to discuss a reduced compliance burden with the RE has been met with the response that "all standards apply to all entities" – or "one size fits all". The development of the exceptions process recognizes that not all entities that meet the "threshold" criteria pose a risk to the BES. This is a significant step in the right direction. But the problem remains that those entities seeking the exception are still required, by default, to comply with all standards during the exceptions process. Holland BPW submitted comments in 2010-17 that, as part of the exception process, the RE must be required to consider a stay of compliance during the evaluation or a reduced compliance burden.
Yes
1. In proposed section 1703, paragraph "2", the following two sentences should be added at the end of the paragraph. "Any response submitted by a Regional Entity or Submitting Entity, (or Owner, if different) must be accompanied by an affidavit of a qualified individual to attest to the accuracy and correctness of the factual information and technical opinions contained in any such response. The Submitting Entity (or Owner, if different) may submit a reply within 15 days following the date a response is filed with NERC." Permitting the aggrieved party to submit a reply is consistent with standard litigation and appellate processes. 2. Proposed section 1703, paragraphs "3" and "4" must be reconciled/combined so that there is a single appeal/review process. Paragraph "3" provides that the appeal first proceed before a NERC review panel. Paragraph "4" provides for yet another review by the NERC Board of Trustees Compliance Committee ("NERC BOTCC"). Under these procedures (combined with the proposed Appendix 5-C), the request for exception and appeals process runs nearly two years. This is not an efficient or effective process and is not just and reasonable. It prevents the aggrieved party from reaching FERC and the federal Courts of Appeal within a reasonable timeframe. all the while being subjected to compliance requirements, threats of compliance violations and

compliance fines. Either bind the NERC BOTCC to the decision of the NERC review panel, or eliminate the NERC review panel altogether and have the NERC BOTCC make the decision in the first place. But, there is no clear explanation or justification for requiring an aggrieved party to have to appeal to the NERC review panel and then the NERC Board of Trustees before reaching FERC and the Courts of Appeal. 3. A new paragraph should be added that requires the NERC review panel (or NERC BOTCC, whichever the case may be) to vacate a decision by the regional entity if the decision made by the RE fails to include an attestation of a qualified individual or individuals to support the factual and technical bases relied upon by the RE in rendering a decision on the exception. (This is different from Comment No. 1, which pertains to an Answer submitted by the RE during the appeals process. This comment pertains to the substance of the decision at the RE level. Requiring a qualified individual from the RE to attest to the facts and technical arguments relied upon by the RE in arriving at the decision will ensure that someone at the RE level is prepared to take responsibility for reviewing a decision before it is issued, to stand behind the assertions and conclusions reached by the Regional Entity, and whom the Submitting Party may cross examine at hearing – whether that be a hearing at NERC or a hearing at FERC, should the appeals process continue to FERC. If the RE is not willing to state that it has one or more individuals that can stand behind the decision, then the decision is suspect on its face and should not take the time and resources of the NERC review panel.) 4. An aggrieved party must have the right to request a hearing before the NERC review panel/NERC BOTCC and should not be limited to a paper process. 5. The NERC review panel/NERC BOTCC must make a decision based solely upon information that is presented to it in the record; and may not make a decision based upon information that is outside of the record. That is, the NERC review panel/NERC BOTCC may not, on its own, conduct an investigation or seek information independently from what has been presented to it. If the NERC review panel requires additional information, it must transparently (openly) request such information, and such information must be provided to the aggrieved party, if the aggrieved party is not the party from whom the information is sought. The aggrieved party must have an opportunity to comment upon or challenge that information before the NERC review panel relies upon any such additional information.

Individual

Linda Campbell

FRCC

Yes

I do have some questions however regarding the Detailed Information to Support an Exception Request. The data and studies based on an interconnection wide basis may be difficult for some entities to provide. In particular some of the smaller generators may be modeled in some bases cases in aggregate form. Or, they may be merchant generators that can not have access to transmission information. How will they be able to sufficiently provide valid information for their particular facility? For the regions in the Eastern Interconnection, where will an entity go to get the studies that they need, ERAG?? Who would be expected to provide an interpretation or explanation of the studies? What if there is a disagreement between the entity seeking the exception and the group that performed the study or developed the base case? Is Section 5.2, Substantive Review, the place where the Regional Entity will be reviewing this Detailed Information? If so, should the document state that? The document really only speaks to providing the Detailed information in 4.5.3 but not what will be done with it.

Yes

see comments/questions submitted with Q1

Yes

see comments/questions submitted with Q1

Yes

see comments/questions submitted with Q1

Yes

see comments/questions submitted with Q1

No

Individual

Barry Lawson

National Rural Electric Cooperative Association (NRECA)

N/A

N/A

N/A

N/A

N/A

Yes

NRECA offers the following comments: New ROP Section 1703 Sec. 3 -- Regarding the standing panel, other than the one required NERC staff person, who is eligible to fill the other at least two members -- NERC or RE staff, industry representative. or other? Other than BES reliability knowledge. what is the criteria for selection for the standing panel

members? Additional detail should be provided in this section. Sec. 4 -- If the BOTCC declines to review the decision of the panel, the BOTCC should be required to provide support/reasoning/basis for its decision to decline to review the decision of the panel. Appendix 5C: Procedure For Requesting An Exception From The Application Of The NERC Definition of Bulk Electric System Sec. 1.1 -- 4th paragraph -- request that during the pendency of an Exception Request the status of such Elements be held in abeyance, meaning not considered as part of the BES, until all appeals are completed. 2.8 - Definition should specify who confirms someone is qualified as an Eligible Reviewer. 2.12 - There should be only one Exception Request Form, not one developed by each RE. NERC, the REs and industry should collaborate on the development of a single for to be used by all REs. Eight separate forms will create unnecessary confusion and potentially result in inconsistent decision-making across REs. 2.13 -- The definition should specify who makes the determination. Also, replace the words "should be" with "is". 2.16 -- The definition should specify who makes the determination. Also, replace the words "should be" with "is". 2.25 -- For the Required Information definition, its designation of "2.25" did not display on my print out of the document. Please correct. 4.1 -- This section should specify that the RE must be required to follow the same process and be subject to the same burden of evidence as any other Submitting Entity or Owner. 4.2 -- The 1st and 3rd sentences of the 1st paragraph seem to contradict each other regarding what can be submitted in a separate Exception Request. Please make clarifying changes to these sentences to better explain what is permitted. 4.3 -- The word "disapproval" should be a capitalized. 4.5.1.9 -- It is unclear what "Status" refers to. Is it referring to whether an Element is currently BES or not? Please clarify in the definition. 4.5.2.2 -- There should not be a requirement for a "technical contact" for the Exception Request. The entity submitting the Exception Request should be able to determine who they want listed as the contact person. 4.5.2.3 -- It is unclear what will be considered as "conferred" as it is used in Appendix 5C. Does it mean leaving a voicemail or sending an email without any discussion? Please provide clarity on the meaning of this term as it is used globally throughout the document. It is also unclear what is meant by "certification" as it is used here. Would it be more appropriate to use the word "confirmation" instead? Please clarify here and globally throughout the document. 4.5.3 -- Definition of "Confidential Information" should be included in the definition section of Appendix 5C. 4.5.4 -- 10th line, use of the word "believes" here is vague and provides no transparency on how the RE makes it's decision. Clarification needs to be provided here. 4.5.4 -- The confidentiality agreement referred to should not be in a form established by the RE. Since the information is from the Submitting Entity or Owner, it should be a confidentiality agreement the Submitting Entity or Owner supports using. 5.0 -- Paragraph after (b) -- it is inappropriate for NERC and the RE to be able to change the time period for reviewing Exception Requests without also being required to come to agreement with the Submitting Entity or Owner regarding establishing an alternative time period. 5.1.3 -- The word "typically" should be removed from this definition. It is inappropriate to use that word in this provision as it seems to create confusion on what the RE is required to do. 5.1.4 -- This section should specify when the RE must send a notice to the Submitting Entity or Owner. It is unclear when the RE is required to send this notice. It may be appropriate to state that the notice shall be sent within the 60 or 30 day timeframe identified in 5.1.3. 5.1.5 -- Same issue as identified above in 5.1.4. 5.2.2 -- On second line after the words "shall confer to" add "jointly agree to" for the purposes of ensuring that all parties involved clearly have a say in determining the related milestones. 5.2.2 -- The RE should be required to include the Technical Review Panel review/opinion in its notice addressing whether it approves or disapproves the Exception Request. 5.2.3 -- 2nd line, a timeframe should be added to when the RE issues its recommendation to NERC. In addition, the RE must be required to provide detailed technical analysis and support, not just an assertion, for its decision on the Exception Request. Language should be added to require this. 5.3 -- Who is eligible to be a member of the Technical Review Panel; how are they confirmed or determined to be a member; who makes such a determination? There should also be a provision for the Submitting Entity or Owner to object to a member of the Technical Review Panel. 5.3 -- Appendix 5C does not provide any direction for how the RE should consider/evaluate the Technical Review Panel's opinion. Language stipulating how the RE will do this should be added and the RE should also be required to provide a specific response to the Technical Review Panel's opinion. 6.0 -- It is unclear what "reset the time period" means in this section. This section should clarify how and according to what direction the time period will be reset. 7.0 -- 7th line, it is unclear what "in writing" means. Does that include email? Is it only hardcopy letter? Please clarify. 7.0 -- last sentence should add that NERC must provide reason/support for the direction it provides to the RE. 8.0 -- How is composition of the three person team determined? What is meant by the "required technical background"? These issues should be addressed in this section. Also, there should be a provision for a Submitting Entity or Owner to object to a member of the three person team. 10.1 -- What is a Board-appointed committee? There is no other information in Appendix 5C about this. Please clarify. Also, in last sentence, it appears that the RE can decide to not agree with the Owner on developing a schedule and then the RE can always determine the schedule unilaterally. This language should be revised to require the RE and owner to reach agreement on the schedule, with no provision for the RE to do so unilaterally. 10.2(a) -- The 12 month requirement may not always be feasible and this section should be revised to provide for some flexibility in this area. 10.2(a) -- 4th line, after the words "has been disapproved" add "and all appeals have been completed or expired". Also, in last sentence, it appears that the RE can decide to not agree with the Owner on developing a schedule and then the RE can always determine the schedule unilaterally. This language should be revised to require the RE and owner to reach agreement on the schedule, with no provision for the RE to do so unilaterally. 10.2(b) -- Same issues identified for 10.2(a) above. 11.1 -- Remove the word "typically" as it creates confusion in this section. 11.3 -- Submitting Entities or Owners should not be required to certify that basis for an Exception Request has not changed every 24 months. Submitting Entities or Owners should only have to notify when such basis has changed. 11.4 -- The same time that the RE provides information to NERC that an Exception may no longer be warranted, that same information must be provided to the Submitting Entity or Owner. 11.5 -- 8th and 9th line. it is unclear what "written notice" means. Does that include email? Is it only hardcopy letter? Please clarify. Also on

the 8th line, there should be a timeframe established for when NERC sends such a written notice. 11.5 -- The decisions made by the RE or NERC should also be appealable in the same manner as rejections and disapprovals. Please add such language. 11.6 -- It is unclear what is meant by "most recent versions" in this section. How would Section III information have been changes? If the intent is to request that Section III be revised, then the language should be clarified to state that. Regardless, please clarify the meaning of this language and also include identifying the purpose of such an information request. Sample Form Section III: Detailed Engineering Information -- Submitted Only to Regional Entity Section B - Detailed Information to Support an Exception Request -- The language in this section was balloted separately from the BES ROP and BES Definition provisions. At present time this language has not passed ballot. Presuming this language, with minor revisions from the BES drafting team, does pass recirculation ballot, how will this language be used since it passed a formal ballot? It is confusing to have a ballot on language that is only used in a sample form. Please provide an explanation.

Individual

Steve Alexanderson

Central Lincoln

Yes

Central Lincoln agrees that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. We have some concerns, however. 1. We are concerned that permissive deadlines may lead to long delays in processing Exceptions Requests. We also believe that the use of certain words and phrases in section 5 is not sufficient to define process expectations. Examples include "objective", "within six months", and "typically". We ask that the RoP Team examine their use of such words and phrases and attempt to provide more prescriptive text. 2. We are concerned that while an Exception is pending final approval, which may involve appeals processes, its implementation may be unduly and unfairly delayed. This delay could be years! Accordingly, we believe that a Submitting Entity, without potential for penalty, may rely upon the action of the RE in approving an Exception Request, even as the Request is subject to review and appeal and NERC and possibly FERC. We believe this approach comports with the deference that is required under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). 3. We support the clarification enhancement to Section 4.1 as recommended by Snohomish PUD and provided herein: Replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As we have indicated above, we are concerned with the potential for protracted final determinations with respect to an RE recommendation. We ask that the RoP Team review the provisions of Sections 8 and 9 and consider improvements to their associated timelines. We also ask that the RoP Team examine the provisions of RoP Section 1703 and consider whether Section 9 of the Exceptions Process should be enhanced with language to assure that undue delays do not occur in the NERC appeal processes considering Exceptions.

Yes

Central Lincoln believes Exceptions Process is strong in the sense of being verifiable by the entities involved in the Processes. Data keeping and record keeping requirements appear adequate. We are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. However, while we believe the Exceptions Process is verifiable by the entities involved in them, we are concerned that the Exceptions Process is not more broadly open. Only an open and transparent process can assure accountability, consistency, and verifiability. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection may be made publicly available. Our response to question 5 provides additional treatment of this matter. We are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. We again state our support for implementing the Exceptions Process.

Yes

<p>We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.</p>
<p>Yes</p>
<p>We agree that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a “one size fits all” approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.</p>
<p>Yes</p>
<p>Central Lincoln concurs with this statement. However, it is our view that the proposed Exceptions Process does not provide sufficient latitude for interested and affected entities to participate the given Exceptions Processes. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team has previously responded that, allowing unfettered interested parties to participate could unnecessarily delay resolution of Exceptions. We ask the RoP team to provide for expanded participation but mitigate its potential for disruptions and delays by prescribing limitations to and standards for that participation. We ask the RoP team to establish participant provisions such that with respect to an Exceptions Request, any downstream entity will have participation status equivalent to the status afforded the applicable PA, RC, TOP, TP or BA.</p>
<p>Yes</p>
<p>The following are bullets for consideration: 1. Amendment Process: Central Lincoln views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. We are concerned, however, that the ROP’s current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through a process that is not consistent with this initial development of the Exceptions Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition. Therefore, we ask the RoP to add a new section, “Amendment”, to the Exceptions Process to establish amendment provisions (procedural requirements) which reflect consistency with this initial development of the Exceptions Process. 2. Dispute Resolution and Technical Review Panels: In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. However, we recommend clarification to Section 5.3, which governs Technical Review Panels, to make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 3. Request Form: We are concerned that the Section 2.12, which defines “Exception Request Form,” imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the “provided” clause to read: “provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area.” 4. Tracking and Reporting: We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. 5. Partial Acceptances and Approvals: Central Lincoln believes the ROP Team should carefully define what happens in cases of a partial Acceptance and partial Approvals of Exception Requests. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. We also recommend the RoP team define tracking treatments (identifications) for cases of a partial Acceptance and partial Approvals of Exception Requests. The team should also consider the priority in time with respect the bifurcated Exceptions requests. A question to consider for example is whether a corrected request component would surge forward to remarry in time with its approved</p>

component. 6. Dialogue during Substantive Review: Central Lincoln believes the intent of last part of the last sentence of Section 5.2.1 to allow the RE and the Submitting Entity to engage in a dialogue should be made clearer. We recommend revised language to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.” 7. Review of RE Recommendations: We are also concerned that the Section 8 process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. Central Lincoln also believes this Section 8 should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 8. Change of Condition: Central Lincoln is concerned that the draft language in Section 11.2, which would require a Registered Entity to report “any change of condition” which could affect the basis for the NERC decision under Section 8.0 is overly broad. We support the Snohomish recommendation to revise Section 10.2 as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. We also support the Snohomish recommendation that further clarity could be achieved by adding a definition of “Material Change,” as follows: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Group

John Bussman

Yes

Yes

Yes

Yes

See comments

see comments

Yes

Q: Regarding page 5 Sect 3.1, final paragraph, final sentence, what does “will be solely dispositive in the determination”? Does that mean that if one assertion fails, but all other assertions are true and adequate evidence to support the Exemption, then that one assertion cannot derail the granting of an Exception request? Page 6 section 4.1 2nd to last paragraph on page Q: Complicated read, where the last sentence indicates that a single Exception cannot be filed for separate Elements within separate REs, but this would seem to indicate that “connected Elements” as referenced within the first sentence, could be submitted to multiple Regional Entities. Possible Conflict: Page Sects 5.1.1 and 5.1.2, with regard to a request spanning more than one regional entity, there is only one YYYY field in the unique identifier assignment. Section 5.1.1 indicates a lead RE has been selected to perform the study, is the YYYY to be that lead RE, or the RE that actually received the Exception request (which is actually two or more in this case per sect 4.1’s final paragraph. Pages 12-15, Section 5.2.2 establishes a 6-month deadline for completion of a substantive review, augmented by section 5.0 which provisions for an unbounded reestablished completion date. Further delays could be incurred should an Owner or other Submitting Entity submit additional information and restart the clock, per section 6.0. NERC then has three more months (90 days) for their selected review team to deliberate the request per section 8.0. Then there is an additional 30 day appeal period after that per section 9.0. This (basically 10 months), will further delay due-process of requests, and in the mean-time Elements remain as BES elements by definition! And if that is not enough, section 11.3 requires recertification of grounds for an Exception every 24 months thereafter, and automatically subject to termination 90 days thereafter, with prior written notification by the Regional Entity(s).

Group

Heather Hunt

No

The New England States Committee on Electricity (NESCOE), New England’s Regional State Committee, appreciates the opportunity to provide comments in this matter. These comments reflect the views of the six New England states - Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island and Vermont. The New York Department of Public Service, through Diane Barney, endorses these comments as well. While the drafting team made a number of improvements, the proposed Rules of Procedure (“ROP” or “Rules”) create a burdensome and redundant process that is likely to consume both time and resources in quasi-judicial proceedings. For example, NESCOE does not see any

need for substantive reviews of exceptions at both the Regional Entity and at NERC. If the technical review process at the Regional Entity level is sufficiently open, and if all parties (including the relevant state regulators) do not object to the Regional Entity's recommendation, there is no purpose served by having NERC conduct a second review. NERC should weigh in only when a stakeholder (including a state regulator) objects to the Regional Entity's determination. Similarly, it does not make sense to have two levels of appeals at NERC, as is proposed in section 1703 of the ROP. Instead, the exceptions process should allow for thorough consideration at the Regional Entity level and prompt disposition of objections at NERC. The proposed re-certification process also adds layers of review that are unnecessary. NERC should rely on the reliability planning processes that FERC has established to raise issues in the future as they emerge out of changing conditions. The Rules, as proposed, could also lead to unnecessary costs being passed to consumers if Owners are forced to incur significant compliance expenditures before all objections to the inclusion of a facility in the Bulk Electric System ("BES") are finally addressed. When there is no such objection pending, it is fair to require the responsible entity to develop and comply with an implementation schedule. Similarly, if the result of the Regional Entity's review is the inclusion of a facility in the BES, it is reasonable to require the development of such a schedule. However, when the Owner or an interested party seeks NERC's review of the classification, the Owner should not be faced with compliance expenditures and potential penalties until after NERC has made its final decision on the status of the facility. NESCOE understands that there may be circumstances in which a delay in implementation creates system risk; the ROP could address this possibility by requiring an Owner to proceed on the submitted schedule when necessary to alleviate a threat to the transmission system. Section 10.1 should be clarified to provide that, except in those circumstances, an Owner will not be required to implement the proposed schedule so long as an objection to the inclusion is pending. Similarly, when a request for an exclusion has not yet been finally determined, NERC should not enforce implementation requirements (see section 10.2(a)). NESCOE also believes that the process described in the draft will be ineffective because it does not provide a sufficient role for state regulators. In the comments submitted in response to question 5, NESCOE offers some specific suggestions for improving this aspect of the process.

No

NESCOE appreciates the drafting team's efforts to create a flexible and open review process. However, NESCOE notes that in at least one respect the proposed Rules might unnecessarily hamstring the decision-maker, whether it is the Regional Entity or NERC. Specifically, section 3.2 suggests that the Regional Entity would not be allowed to base a decision on a single piece of evidence even in the case where that evidence was overwhelmingly persuasive. The decision-maker should be allowed to review all the potentially meaningful information but should not be required to hunt through the record for some additional supporting fact when there is one fact or data set that clearly disposes of the issue. NESCOE suggests deleting the last sentence of section 3.2.

No

NESCOE is concerned that the proposed Rules continue to exclude states from an opportunity to participate meaningfully in the exception process. Without state participation, the process will not address the full range of substantive concerns that may arise in any given case, and NERC will not have the benefit of the states' views. In its comments on the last posting of the ROP draft, NESCOE requested that states, at minimum, be provided (i) notice of an exception request, (ii) notice of the applicable Regional Entity's recommendation regarding such request, and (iii) an opportunity to review the exception related information and to submit comments to the Regional Entity during its review and, later, to NERC following the Regional Entity's recommendation. NESCOE additionally supported a more active role for ISO/RTOs, including timely notice of an exception request and the opportunity to express concerns about, or provide support for, such request. However, while the revised Rules now provide a greater role to planning authorities and other entities, states still do not have a role in the consideration of proposed exceptions. Following the comment period on the last posting of the ROP, the NERC BES Rules of Procedure Team ("ROP Team") determined: "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." "Consideration of Comments on the NERC ROP Appendix 5C BES Exception Process — Project 2017-10" at Response #6, available at http://www.nerc.com/docs/standards/sar/Project_2010-17_BES_ROP_Consideration_of_Comments.pdf. This response overlooks the obvious. State regulatory authorities must first be made aware of the exception request before they can determine whether and to what extent to express concern or support a request; however, the Rules do not include any mechanism that would facilitate states' participation. This gap can be fixed by amending the Rules to ensure that relevant state regulatory authorities receive the same notice and access to information as Planning Authorities and other entities are provided in Sections 4.5.1 and 4.5.2. States should also have the same right to provide comment and input to the Regional Entity as those other entities have under section 5.4. Additionally, NESCOE repeats its earlier request that relevant states be provided notice of a Regional Entity's recommendation pursuant to 5.2.3 and an opportunity to submit comments to NERC under section 8.0. States should also have the right to appeal a NERC determination under proposed rule 1703. NESCOE is also concerned that the draft Rules continue to lack a mechanism for a state regulatory authority to obtain review of the status of an element. As NESCOE stated in comments on the last ROP posting, state personnel with CEII clearance should have access to the current list of

elements classified as BES. However, States are not in a position to submit an exception request because they lack the information required for submission under the ROP. To ensure meaningful state participation, NESCOE again suggests the following framework: (i) Upon request from a state, the Regional Entity should be required to undertake a review of the element or elements in question. If the Regional Entity determines that the classification is in error, the ROP should require the Regional Entity to submit an exception request to NERC. (ii) States should be afforded an opportunity to file an appeal directly with NERC if the Regional Entity declines to file the exception request, or to seek NERC's review of the Regional Entity's classification of the element or elements in question. NESCOE's comments on the last posting of the ROP also supported the ability of ISO/RTOs and similar entities with oversight over portions of the transmission system to submit an exception request. The amendments improve the Rules by permitting Planning Authorities and other entities the limited ability to submit a request for inclusion of facilities in the BES. NESCOE believes Planning Authorities should not be limited to initiating review of inclusions but should also be permitted to propose a possible exclusion.

No

Individual

Maggy Powell

Constellation Energy

No

Additional clarity and refinement of language is necessary with regard to the following:

- Section 1.1, paragraph 4 – This paragraph indicates that elements that apply for exception maintain their status as determined by the BES definition language until the exception decision is made. Given the time and expense associated to bring an element up to the BES Standards this presents a significant impact for elements that may ultimately be excluded from the BES. The status of an element should be held in abeyance until a final decision is reached.
- 1.1, paragraph 5 notes that Regional Entities, PAs, RCs, TOPs, and Bas can apply for inclusion exceptions for elements. The submitting entity under this circumstance should notify the other non-submitting eligible entities of the request so that they may provide input on the matter.
- 2.8 – The language does not address who confirms that a person qualifies as an “Eligible Reviewer”. Please clarify.
- 2.12 – the Exception Request Form is a NERC template that requires adoption by each Regional Entity. This means that Exception Forms could differ by Region thus reducing consistency across regions. The Regions and NERC should work together to develop a single version of the Exception Request Form for use by all.
- 4.5.1 Item 10 – “Status” should be clearly defined.
- 4.5.2 Item 2 – It is not clear why the contact person needs to be “technical”. In addition the language should explain what qualifies the contact person as “technical”.
- 4.5.2 Item 5 – What qualifies as “certification”? “Confirmation” may be a more appropriate term, though what qualifies as confirmation or certification must be clear?
- 4.5.3 – “Confidential Information” is capitalized but the definition in Appendix 2 is not reiterated in this Procedure. Since the other Information type definitions are pulled into this section of the RoP, “Confidential Information” should be as well.
- 4.6.2 – Again, the language does not clarify how a person is confirmed as a qualified “Eligible Reviewer”. Please clarify.

• Section 4.1 Eligible Submitting Entities. The language relating to what entities may submit an Exception Request and under what conditions is confusing. Additional refinement of this section is needed to more pointedly and clearly lay out the types of entities that may file an Exception Request and the specific circumstances under which these different types of entities are eligible to file these requests.

• Also with regard to Section 4.1, the statement is made that “[w]hen a Regional Entity requests an Exception, the Regional Entity shall submit its Exception Request to NERC, in which case, NERC will perform the duties and responsibilities of the “Regional Entity” specified in this Appendix.” Beyond this statement, no additional framework is given for when NERC must take the place of a Regional Entity in an Exception process. This single statement is insufficient. NERC's role in the place of the Regional Entity needs to be further fleshed out as it is unclear how NERC would internally separate the functions of the initial screening, develop a Recommendation and then rule on that Recommendation. Moreover, how would a Section 5.3 Technical Review Panel be established at NERC? Does NERC also have to establish provisions for a Technical Review Panel if it is playing the role of the Regional Entity, and if so, will Industry be given the opportunity to comment on this new provision? Further, with NERC playing the role of the Regional Entity, we foresee a significant amount of confusion during the appeals process because appeals of Regional Entity decisions are made to NERC, but if NERC is playing the role of the Regional Entity, whom does an impacted entity appeal to? Generally speaking, additional guidance needs to be incorporated into the BES Exception Procedure on how the process will operate if NERC must play the role of the Regional Entity.

• Also generally speaking, the time frame for responses, supplementing information, providing decisions and appealing decisions are hard to follow. Section 5.1.5(a) brings cause for concern on this issue where, when a Submitting Entity provides supplemental Required Information, the Regional Entity is given 15 days after receipt to complete its initial screening. Under Section 5.1.3, the Regional Entity typically has 60 days to complete their initial screening. If the 15 days under Section 5.1.5(a) falls within the early stages of the initial screening 60 days, does the Regional Entity still have until the end of the 60 days to complete its screening or will the screening period be cut short and end at the 15th day after the supplemental information is received?

• When a Regional Entity or NERC receives a Exception Request, a notice should be issued so that all impacted entities are aware of the request and are given a fair opportunity to participate as provided for in the procedure.

• Section 5.1.3 states that the Regional Entity will typically complete its initial screening of the Exception Request and any Owner responses within 60 days. The term typical creates confusion over what is typical and what is not. Further, this provision should be amended to expressly state that the Regional Entity will not only review the

Exception Request and Owner responses, but also all other responses/comments received by other impacted entities.

- Similarly, Section 5.2.3 states that, with a Recommendation, the Regional Entity will provide NERC copies of the Exception Request Form and all other information considered by the Regional Entity in arriving at its Recommendation. As drafted, this language makes it seem like the Regional Entity only has to provide information it believes to be relevant to its Recommendation. The provisions should be amended to clearly state that the Regional Entity must provide NERC with all the information, responses, comments, reports/opinions, etc. submitted by all entities and review panels during the course of the initial screening and substantive review process. NERC should be given the entire record, not just what the Regional Entity may have relied on to come to its Recommendation.
- 5.2.3 – Disapproval notices should also include the Technical Review Panel report/opinion.
- Section 5.3 talks about the Technical Review Panel. Clarification needs to be provided on what qualifications these individuals should have, and the proportion of Industry experts versus Regional Entity employees that should make up this panel. Opportunity should be given to object to a reviewer. Also, what appellate recourse do entities have to challenge a panel's determination or weigh in on a panel's determination in the form of comments or informational submissions?
- Section 5.3 states that the individuals on the Technical Review Panel "shall not have participated in the review of the Exception Request." This language should be modified to state that the individuals on the Technical Review Panel "shall not have participated in the initial screening or initial substantive review of the Exception Request." Without this revision, it is confusing to think that these individuals must make a determination without reviewing the Exception Request in question.
- 5.3 – the language should make clear that Technical Review Panel will take into account the full record in forming their opinion.
- Similar to the Technical Review Panel provision, Section 8.0 needs to provide requirements around the qualification of the "team of three persons" and the proportion of Industry experts versus NERC employees that should make up this team. The team should be given access to the entire record and not just the Submitting Entity or Owner responses/comments.
- 10.1 - Language must be clarified as to when is a proposed implementation plan submission is required and enough time should be allowed to credibly develop the implementation plan.
- 10.2 (a) – The requirement to submit an Exception Request 12 months prior to commercial operation is not clearly justified and may not be feasible in all cases. The rules should allow for flexibility in submission timing.
- 10.2 (b) – Likewise, the 12 months is not clearly justified and may not be sufficient depending on circumstances.
- 11.1 – Use of the term "typically" prompts the question what makes a situation typical or not. The term should be stricken.
- Section 11.3 requires the Submitting Entity to certify its Exception periodically with the Regional Entity. Here again we have a problem associated with the Regional Entity being the Submitting Entity and NERC playing the role of the Regional Entity in such cases. If the Regional Entity is the Submitting Entity, does the Regional Entity have to periodically certify its Exception with NERC?
- 11.3 – Last sentence should include notification of the Owner if different from the Submitting Entity and should clarify if the notification is sent prior to termination or upon conclusion.
- 11.5 – Terminations should be subject to a comparable appeal process as is afforded rejections and disapprovals.
- 11.6 – Mention of "recent versions" suggests updating of Section III not mentioned elsewhere. If the request for such info is intended to trigger the update the language should be clarified. Also, it's not clear what the intent or purpose of gathering this information is.
- Finally, clarification is needed on whether all of the documents submitted and issued during the course of an Exception Request process will be made publically available (except of course any information that is given confidential treatment). We are of the mindset that all such documents should be made publically available, much like a proceeding before FERC where all of the non-confidential documentation from that start to the end of a proceeding can be found on the FERC website. Having all of this information publically available will assist in ensuring consistency in determinations between different Regional Entities and NERC.

No

As stated above, more specificity is needed around the process when NERC is acting as the Regional Entity.

Yes

Yes

Yes

Yes

- Section 1.2, paragraph 2 – footnote not properly formatted
- Section 2.9 Typo: "and" should be "an"
- Section 2.25 Typo: Need to include Section number 2.25
- 2.26 – oddly worded
- 4.1, first paragraph – extra space between "Entity" and ","
- Section 4.2 Clarification: Replace the term "any Owner" in the last sentence to "any of the Submitting Entities" as Submitting Entities are not necessarily always the Element Owner.
- 4.3 – disapproval should be capitalized
- Section 4.4 Clarification: How is it that an Element's Owner would ever be unknown?
- 4.5.1 items 2 and 4 – the word "yet" unnecessary and less clear than without it
- Section 4.6.3 Typo: A comma is needed in the last sentence after "third party."
- Section 5.0 Typo: The reference to "Section 5.1.3(a)" should be corrected to read "Section 5.1.3."
- Section 5.2.2 Clarification: The reference to "Section 5.0" should be deleted as it does not discuss alternative time periods. Rather, alternative time periods are discussed within the text of 5.2.2.
- 7.0 second sentence "Owner if different" should be followed by "than the Submitting Entity" for consistency."...a copy to the Regional Entity and Owner if different than the Submitting Entity, ..."
- Section 7.0 Clarification: This section talks about "reports submitted by the Regional Entity or Regional Entities pursuant to Section 5.1.5." Section 5.1.5 does not mention any "reports." Section 7.0 should be revised to be consistent with Section 5.1.5 which talks about the Regional Entity issuing a rejection

notice and Technical Review Panel opinion. • 8.0, second sentence, may flow better by adding the word “in” before “opposition” • 11.6 – for consistency, quality Owner as “if different from the Submitting Entity.
Group
Sandra Shaffer
Yes
Yes
Yes
Yes
Yes
Yes
Comments: Section 11.3 of the draft Procedure requires Submitting Entities to periodically certify to the appropriate Regional Entity that the basis for inclusion/exclusion of an element remains valid, and footnote 4 provides that the certification shall consider the effect of the exception on system limits and impacts as a result of the contingencies listed in Table 1 of the applicable TPL Standards. PacifiCorp believes that the reference to the TPL Standards is confusing. If an element has been excluded from the definition of BES through the exception process, then that element, by definition, should not be studied as part of the entity’s TPL studies, unless the intent is for entities to identify issues associated with identified BES elements where inclusion of the non-BES element may be the solution to potential issues upon loss of a defined BES element. In addition, Section 11.3 of the draft Procedure requires entities to provide a certification 24 months after the date on which an exception request was approved. PacifiCorp believes that re-certification should be extended to a period greater than two years, and the Company questions the intent of such a short re-certification period. PacifiCorp also recommends revision to Section 11.3 to provide additional information concerning what Submitting Entities must provide as part of any recertification. PacifiCorp also believes that it is paramount that the CEA auditors apply and treat all approved exceptions in a similar manner when auditing Submitting Entities and, as such, the Procedure or elsewhere in the ROP should expressly provide guidelines for the consistent treatment of approved exceptions.
Group
Robert S. Lynch
Yes
In Appendix 5C, the use of the term “Confidential Information” in Section 4.5.3, (pp.11-12), 5.?(p.12) and 4.46.3 (p.13) appears to be a general definition including Classified National Security Information, NRC Safeguards Information and Protected FOIA Information. However, the term is combined with its three apparent parts in 4.46, 4.46.1 and 4.46.2 as if it were a fourth category. Whatever was intended needs to be clarified. Moreover, the reference to “appropriate confidentiality agreements” in 4.46.3 references “Confidential Information” while the remainder of the paragraph is limited to “Protected FOIA Information”. Is the use of confidentiality agreements contemplated for use with all types of information to which access is restricted? Is the use of confidentiality agreements intended to recognize the requirements of public power entities under their respective state, territorial or possession public records laws? Is there some set of parameters that a Regional Entity is supposed to use in deciding whether to share Confidential Information with a third party? Since the Regional Entities are private corporations, how do they protect confidential information under FOIA? Isn’t there a serious waiver issue?
Group
Will Smith
Yes
Yes
Yes
Yes
Yes

Yes
No
Individual
Chris Higgins/Steve Larson
Bonneville Power Administration
Yes
<p>"For section 2.2 on page 4, BPA believes that the last phrase, "which would be lost were the Required Information to be placed into the public domain" should be stricken. BPA believes that "Protected FOIA Information" should not be limited to situations in which the exemption would be lost if placed into the public domain. BPA believes that it shouldn't matter whether the exemption would be lost by being placed into the public domain. An Exemption 3 statute might eliminate a waiver upon disclosure, but that does not mean that the information should not be considered Protected FOIA Information." "For section 4.5.2 on page 8, beginning of second paragraph, BPA believes that the entity that is restricted from posting or disclosing should be identified. Is it the Regional Entity?" For section (5) 5.2.3 of pages 12-13, BPA believes that the type of notice is not clearly defined as there is no "notice referenced in 5.2.3". Is this the same as providing copies of the Recommendation to the Submitting Entity (and Owner)? For section (8) of pages 14-15, BPA believes that the three person team should also review any comments submitted to the Regional Entity under 4.5.4 such as those from a BA, RC, etc. How is the NERC decision communicated and should not the BA, RC etc. be notified, particularly if they have commented?</p>
Individual
Paul Titus
Northern Wasco County PUD
Yes
<p>Northern Wasco County PUD (NWCP) agrees generally that the Rules of Procedure Team ("ROP Team") has made substantial progress in developing a balanced, fair, and efficient Exceptions Process. We support many of the changes made by the ROP Team, and support the progress that has been made so far in drafting workable rules. For example, we believe the addition of the first paragraph under Section 1.1 of the revised Rules of Procedure sets forth a clear explanation of the relationship between the BES Definition and the Exception process. Similarly, the ROP Team has included language where necessary distinguishing between how an Exclusion Exception and an Inclusion Exception will be treated. And, in Section 4.1.1, the ROP Team has required an RE or other entity intending to file an Inclusion Request to confer with the affected Owner before making any filing. We support these specific additions and clarifications, which will be of great aid for industry participants attempting to navigate the Exception process, and will improve the efficiency and effectiveness of the process. That being said, NWCP believes the Exceptions Process can be further improved and clarified, and we suggest specific changes in the comments that follow. As to the efficiency and effectiveness of the proposed rules, we have the following suggestions for improvement: 1. We are concerned that lax deadlines may lead to long delays in processing Exceptions Requests. We believe the ROP Team has made substantial progress in tightening up timeline expectations from what appeared in its initial draft. For example, we recognize that the ROP Team has attempted to confine the REs and NERC to specific deadlines except in extraordinary circumstances. (Section 5.0). However, we are concerned that lax timelines are still allowed in some provisions of the Rules of Procedure draft. For example, Section 5.1.3 states that the RE will "typically" complete its initial screening of an Exception Request within sixty days, but puts no boundaries on what is "typical" or under what "atypical" circumstances the RE could exceed the sixty-day deadline. Similarly, Section 5.0 allows the RE, in consultation with NERC, to set an "alternative time period objective and work plan." The word "objective" should be deleted from this provision to make clear that the alternative time period is a firm deadline and not merely an "objective." Similarly, Section 5.2.2 allows the RE and the Submitting Entity to agree on milestones to complete substantive review of an Exception Request "within six months of Acceptance." We recommend that the ROP Team to change this language to "no more than six months," which will make clear that six months is intended as an outside deadline (except in extraordinary circumstances), but that a shorter deadline is acceptable and encouraged. And we recommend that the ROP Team eliminate this and similar language that could allow the Exceptions process to be unnecessarily delayed. 2. On a related note, we are concerned that awaiting the completion of all appeals before an Exception is granted could unduly delay proper administration of the Exception process. The current draft provides that the result dictated by the BES Definition will be binding until the completion of all appeals, including any appeals to FERC. It is easy to envision that, if an Exception Request went all the way through the RE, NERC, FERC, and Court of Appeals processes, the time elapsed from filing the Exception Request until final resolution would be, at a minimum,</p>

approximately three years, and perhaps several years beyond that. Accordingly, we believe that an Entity should be able to rely upon the action of the RE in approving an Exception Request, even if the Request is subject to appeal at NERC and/or FERC. We believe this approach comports with the deference that is required to WECC's technical expertise under Section 215 of the Federal Power Act ("FPA") for REs. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to "technical expertise of a regional entity organized on an Interconnection-wide basis" and to "rebuttably presume" the validity of a standard offered by such a regional entity). It also allows any reliability gaps that may be created by the improper exclusion of an Element under the BES Definition to be remedied as quickly as reasonably possible, and, similarly, for an entity facing the costly burden of complying with inappropriate reliability standards arising from improper inclusion in the BES Definition to be freed from that burden as quickly as reasonably possible. The ROP Team expressed a legitimate concern that, if the RE's decision is binding during the pendency of an appeal to NERC, unnecessary expense and uncertainty could result (Consideration of Comments at p. 4, ¶ 9). We agree that these concerns should be taken into account, but they can be addressed by adopting the language we suggest below, which carefully defines how compliance obligations arising during the pendency of an appeal can be addressed efficiently and without imposing undue burdens on either the registered entity or upon NERC and the REs should the RE's decision be reversed on appeal. We therefore recommend that the decision on an Exception Request be considered final upon resolution by the relevant RE and, to address concerns related to reliance on a decision that could be overturned on appeal, a new Section 5.2.5 be added to the draft, which would read as follows: 5.2.5 (a) Upon issuance of a Recommendation by the RE in accordance with Section 5.2.3, the Recommendation shall be considered final and binding upon the RE, the Submitting Entity, and the Owner (if different from the Submitting Entity), although it may be appealed to NERC and then to any Applicable Government Authority. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the implementation period specified in Section 10.0. (b) If the Recommendation is appealed and disapproved, reversed, or revised by NERC or an Applicable Government Authority, the Owner and RE shall take appropriate action to revise the Owner's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.5(a) but before that Recommendation was disapproved, reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. We suggest that the ROP Team include one or more mechanisms by which an entity may obtain guidance concerning whether and how its facilities should be registered. The ROP Team originally included a mechanism by which an entity could obtain guidance but this would have required a considerable expenditure of resources, both by the RE and by the entity. We agree with the ROP Team's decision to drop this mechanism because of its costs. However, we disagree with the ROP Team's decision to eliminate entirely mechanisms for providing guidance. The ROP Team states that whether an Element is "in or out" of the BES Definition is a prerequisite for application of the Exception process and that NERC and the REs should assist entities in determining how the BES Definition applies to them (Consideration of Comments at p. 1, ¶ 1). We respectfully suggest that the ROP Team include a specific mechanism by which guidance can be obtained concerning the application of the BES Definition to particular Elements, and the related question of application of specific Reliability Standards to that Element. These mechanisms could include: (a) First, the ROP Team should add a mechanism by which an entity can obtain informal guidance from the staff of NERC or the relevant RE through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. (b) Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance, but would not require the full-blown effort and production of information involved in an Exception process. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. (c) The ROP Team should also consider a mechanism by which registered Entities could seek guidance about which Reliability Standards apply to them, which Elements are subject to those reliability standards, and the specifics of how compliance can be achieved for each applicable standard. Such advice could be part of, or use mechanisms similar to those suggested above. In addition, in cases where an entity is determined to own or operate Elements of the BES, but application of the full range of BES standards may not make sense in the particular circumstances of that owner/operator, this mechanism could be used as a forum for the registered entity and NERC (or the RE, as applicable) to determine which standards should apply and which may be waived. On this score, we note that FERC has in several recent decisions determined that a registered entity owned or operated BES equipment, but nonetheless recognized that, in the particular circumstances faced by that

owner/operator, it may not make sense to impose the full range of BES-related Reliability Standards. FERC therefore directed NERC and the registered entity to agree upon which standards should apply and which standards can be waived without threatening bulk system reliability. E.g., Cedar Creek Wind Energy, LLC, 135 FERC ¶ 61,241 at PP 72, 88 (2011). We believe it makes sense for NERC and the REs to have a defined procedural mechanism available for these kinds of negotiations and, because the question of which standards should apply is closely related to an entity's registered functions, we believe it is appropriate for the these questions to be addresses under the same procedures as guidance is sought concerning the applicability of the BES Definition. Similarly, while we agree with the ROP Team's inclusion of language in Section 1.1 allowing an entity planning to construct a new Element to request an Exception prior to commercial operation of the Element, we believe more expeditious mechanisms such as those suggested here should also be available to such an entity. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. 3. We support the ROP Team's effort to clarify the extent of the information that would have to be provided with an Exception Request, and we believe the language chosen by the ROP Team helps to clarify the information that is necessary without burdening the Exception process with unnecessary information. That being said, we believe the language chosen by the ROP Team could be further improved. Specifically, we suggest replacing the third sentence of Section 4.1 with the following language (the italicized language represents new or changed wording): "Where the Submitting Entity files an Exception Request for multiple, similar Elements (either at the same location or at different locations within the geographical boundaries of a Regional Entity) on the same basis, the Submitting Entity may file a single Exception Request covering all such Elements. Such an Exception Request must identify the relevant Elements or groups of Elements with sufficient specificity that they may be readily identified by the reviewing body, including identification of the network or system of which the Elements are a part, but the Submitting Entity need not identify each Element or Groups of Elements individually." 4. As to the "clarity of expectations," we recognize that, when considering the ROP Team's efforts in conjunction with the efforts of the BES Standards Development Team, the process is a work in progress, especially because a number of important questions will only be answered at the end of Phase II of the BES Definition standards process. Nonetheless, NWCP believes it is best to adopt the Exceptions Process with the modifications we suggest, with additional essential supporting detail to be developed during Phase II. After definitive exceptions criteria and methodologies are provided through Phase II, we believe the submitting entities will be able to submit Exceptions Requests with a high expectation of approval and avoid requests where disapproval is likely. While we recognize that NERC must ultimately review any Exception Request granted by an RE, we are concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. The current draft requires an appeal to NERC under Section 8.0 of the Exception Procedure, in which a three-person technical team would review the RE's recommendation reached in accordance with Section 5.2.3 of the Exception Procedure. This procedure could take up to 90 days (or 120, if the 30 days allowed for filing comments is included). Further appeals would then be decided under a new Section 1703 of the NERC Rule of Procedure and would require another two-step process before a final resolution is reached, in which: (1) a "standing panel" of NERC technical staff and industry experts would decide the appeal within 90 days after assignment from the NERC Director of Compliance Operations; and, (2) the decision of the standing panel could then be appealed to the NERC Board of Trustees Compliance Committee, which could take an additional 90 days to decide the appeal. We believe these three appeal steps could be combined into a single step, perhaps either through establishment of a new Board of Trustees committee specifically assigned to decide Exceptions, which can seek technical advice from NERC staff or industry experts at its discretion. In particular, we believe the appeal to the three-person team under Section 8.0 of the draft Exception Process and the appeal to the "standing panel" under draft Section 1703(3) of the draft addition to the NERC Rules of Procedure are redundant. It is not clear what would be gained by a second round of technical review at the NERC level. We note that, under Section 409 of the NERC Rules of Procedure, appeals from compliance decisions of REs are decided in a one-step process by the NERC Board of Trustees Compliance Committee. It is not clear to us why appeal of a RE decision on an Exception Request requires the much more elaborate process proposed by the ROP Team. We also suggest that language be added to Section 1703 to assure that undue delays do not occur in the NERC appeal process. For example, draft Section 1703(2) requires an appeal to be filed initially with the NERC Director of Compliance Operations within 30 days after a decision of the three-person panel under Section 8.0 of the Exception Process, but there is no specific deadline for the Director of Compliance Operations to refer the appeal to the standing panel. If the ROP Team elects to retain the multi-tiered approach to resolving NERC appeals, we recommend that the ROP Team include a deadline for the Director of Compliance Operations to assign the appeal to the standing panel, and that this deadline should be short – no more than ten days – since the Director's duties in this regard are purely ministerial.

Yes

As a general matter, NWCP agrees that the ROP Team has provided a mechanism that should be consistent, repeatable, and verifiable, although these qualities will depend on how the process developed by the ROP Team is carried out in practice. Further, while we agree as a general matter that the process should be consistent, the process should also recognize legitimate differences between the regions and should not try to artificially force uniform results. For example, the Western Interconnection uses a path rating system while the Eastern Interconnection uses flowgates. Both the BES Standard Drafting Team and the ROP Team have recognized these differences in their work to date and should continue to do so as the standards drafting process moves toward completion. Where appropriate, we are confident that NERC and the REs will strive for consistency. However, in the interim before completion of Phase II, it may be necessary for NERC or the REs to delay consideration of some Exception Requests, especially where they

raise issues that are to be addressed in Phase II. Hence, given the unique standards development process that is now unfolding, it may be best for the ROP Team to allow for a delay for Exception Requests raising issues that will be addressed in Phase II, recognizing that the sacrifice in efficiency is likely to be counterbalanced by the improvement in consistency and repeatability. In addition, to the extent a number of Exception Requests raise similar issues, it may be necessary for NERC or the RE to delay consideration of the initial Requests so that similar requests can be considered and resolved consistently. For similar reasons, we are concerned that FERC will consider the Exceptions Process deficient because it lacks definitive exceptions criteria and methodologies. We believe that, when viewed in light of the Standard Drafting Team's express intent to proceed expeditiously with the Phase II process, such a criticism is unfounded. While the Exception Process initially may be less than perfect, we are confident that the result ultimately achieved after completion of Phase II will be effective, efficient, and workable, and a great improvement on the status quo. While we generally agree with the ROP Team's approach as to matters of consistency, we suggest that additional changes to the ROP documents would be beneficial. Specifically, we recommend:

- As discussed in more detail in our response to Question 5, we are deeply concerned that the Exception process will largely occur in a black box because of restrictions on access to relevant information in the rules proposed by the ROP Team. In the absence of such information, it will be difficult or impossible to determine whether the Exception process is being carried out in consistent manner. Accordingly, we urge the ROP Team to expand the scope of information that is publicly available so that all information that is not subject to some specific, pre-existing legal protection be made publicly available. Only an open and transparent process can assure accountability, consistency, and verifiability.
- The phrase (§ 3.1(b)) "No single piece of evidence . . . will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved" should be changed. We understand that the ROP Team intends that any Exception process should look at all the evidence submitted by the Requesting Entity and not just at one or two specific pieces of evidence or threshold determinations. We agree with this concept. We are concerned that the language chosen by the ROP Team, however, does not clearly convey this intent. First, because it specifies that no "single piece of evidence" should be dispositive, it begs the question of how much evidence is necessary to meet the burden of proof established by Section 3.2 and implies that two pieces of evidence would be sufficient. Further, it is not clear why one piece of evidence is insufficient if the evidence is sufficiently persuasive. For example, the fact that the high side of a transformer operates at 12.5 kV should, by itself, demonstrate that the transformer is part of a distribution system. We therefore suggest that the ROP Team replace the language quoted above with the following: "Each body examining an Exception Request should reasonably consider all evidence submitted and base its conclusion on the totality of the evidence and not on any single piece of evidence viewed in isolation."

Yes

We believe the ROP Team has provided for the most consistency possible given the legal landscape it must deal with on cross-border issues.

Yes

NWCP agrees that the ROP Team has achieved an appropriate balance allowing consistent and verifiable results, while avoiding a "one size fits all" approach that does not recognize legitimate differences between regions and between particular systems. In other words, we agree that similarly-situated entities should be treated consistently, but legitimate differences should be recognized. In our view, the ROP Team has largely achieved this balance. In this regard, as we noted in our comments on the Detailed Information document, a Submitting Entity should be allowed to submit any evidence it believes is relevant to the determination of whether a particular Element or group of Elements should be classified as BES. Accordingly, the Detailed Information form needs to be amended to allow entities to submit relevant information that does not fit within the pre-defined categories.

No

NWCP believes the process proposed by the ROP Team needs to be improved in four particulars to ensure that commenters may fully address their substantive concerns in any particular Exception process, and to ensure an open, transparent, and meaningful process more generally:

1. The ROP Team should include a mechanism to allow any interested party to participate, at least in a limited fashion, in an Exception process. The list of allowed participants should include, at a minimum, any electric industry entities that may have an interest in the outcome of an Exception Process, even if the proposed Exception does not have a direct physical effect on their systems. We also believe government agencies charged with safeguarding the public interest such as state public utility commissions, as well as trade groups who broadly represent the interest of one or more segments of the industry, should be allowed to participate in the Exception process. We believe expanding the scope of parties allowed to participate in Exception processes will improve the outcome of the process because it will allow interested parties that would otherwise be excluded to provide information to the bodies reviewing an Exception Request that may not be available from the Submitting Entity and the limited set of entities (the PA, RC, TOP, TP, and BA with a "Scope of Responsibility" over the Submitting Entity) the ROP Team has proposed as participants in the Exception process. For example, a decision in any particular case may have implications well beyond the specific system involved, and could set a precedent even in different interconnections or REs. The list of potential participants compiled by the RPO Team, however, is strictly limited to those entities that are located in the geographical area likely to be directly affected by a particular Exception Request, and therefore will necessarily lack the perspective of others who may be similarly situated but are located in other geographic regions. If the ROP Team expands the list of allowable participants in the Exception process, Entities that may be affected by the precedent set by a particular Exception Request, but might not be directly and physically affected by the Exception Request, will be able to provide the reviewing body with information it would not otherwise receive. This will help ensure that the reviewing body is fully informed of the reliability implications of its decision, and

will also have other information on the potential effects of a particular decision, so that the reviewing body can appropriately formulate its decision to avoid unintended reliability consequences and to avoiding other unintended effects of a decision. This will be particularly true in the early phases of the Exception process because initial Exception decisions are likely to have far-reaching precedential effects. The ROP Team rejected this suggestion, concluding that allowing interested parties to participate could unnecessarily delay resolution of Exceptions (Consideration of Comments at pp. 2-3, ¶ 6). While we share the ROP Team's concern with timely resolution of Exceptions, we believe that allowing broader participation as described above will not significantly increase the timeline for resolution of Exceptions as long as appropriate deadlines for participants are included in the Rules of Procedure. For example, federal courts generally require intervenors and amicus curiae to make their filings ten to fifteen days after the main parties. Similarly, the ROP Team can provide a specific page limit or other limit on the amount of information a participant who is not directly and physically affected by an Exception Request would be able to submit, which will help avoid having the process bogged down in unnecessary paperwork. We believe the information that will be added to the process by participants will substantially improve the process, justifying a slight delay in resolution of Exceptions and the slight added burden on the reviewing body. If the ROP Team does not allow broader participation, it should add language to the Exception Process making clear that Exception decisions have no precedential value to any entity other than those that participated in the process. It is fundamentally unfair and a violation of due process rights for entities to be bound by decisions in which they had no rights to participate. If the ROP Team limits participation rights, it should for this reason also limit the precedential effect that can be accorded to Exception decisions as to non-participants. For similar reasons, if the ROP Team elects to follow the path of limited participation, it should at least allow an entity operating an Element that is downstream from an Element subject to an Exception Request to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct, physical interests in an Exception process.

2. Notice requirements should be clearly spelled out so that neither the Submitting Entity, the RE, nor the other participants will be wrapped up in unproductive procedural arguments about whether notice was properly provided. We suggest three changes to the proposed Rules of Procedure to clarify notice requirements. First, we believe the definition of "Scope of Responsibility" needs to be clarified. Proposed Section 4.5.1 requires the Submitting Entity to provide a copy of the its Exception Request to "each PA, RC, TOP, TP, and BA that has . . . the Elements covered by the Exception Request within its Scope of Responsibility." The proposed definition of "Scope of Responsibility," in turn, includes the "registered functions of a PA, RC, TOP, TP or BA" as well as the geographical or electrical region of such entities. While its seems fairly straightforward to identify the relevant entities in the geographical area of the Elements subject to an Exception Request, it is unclear how the "registered functions" of such entities could be easily identified and whether the Elements subject to an Exception Request is within "registered functions" of the Entity. We suggest that the reference to "registered functions" in the definition be deleted or clarified. Second, we suggest that the RE, and not the Submitting Entity, is the more appropriate entity to determine which registered entities should receive specific notice of an Exception Request because the RE will have greater knowledge of the different entities involved in or responsible for elements of the electric associated with the facilities subject to the Exception Request. Hence, we suggest that the second sentence of Section 4.5.1 be amended to read: ". . . the Submitting Entity shall submit a copy of Section I to the Regional Entity (or Entities) in which the Element or group of Elements subject to the Exception Request is located. The Regional Entity shall then provide a copy of Section I to each PA, RC, TOP, TP, and BA it determines has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility and to any Owners of Elements that are downstream of the subject Element." Third, NERC or the REs should be required to post on their websites a list of Exception Requests received, along with a brief description of the Exception Request sufficient to put all interested parties on notice of the substance of the Exception Request. This will allow all industry participants to be notified of Exception Requests and to participate in those Requests in which they may have an interest.

3. We are also concerned that the proposed Rules of Procedure unnecessarily restrict access to information. In our view, all information should be publicly accessible unless it is subject to specific restrictions for reasons of national security or is subject to some other specific protection, such as being classified as Critical Electric Infrastructure Information ("CEII") under FERC rules. Accordingly, the following sentences should be deleted: (a) in Section 4.5.2, "Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing an Exception Request;" and, (b) in Section 4.5.3, "The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information." These sentences should be replaced with the following: "All Section II and Section III information shall be available upon request to any interested party, except that the Submitting Entity shall designate any Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information as Confidential Information and Confidential Information so designated shall be available only to Eligible Reviewers." We believe the all participants will benefit if the Exception Process is as open and transparent as possible and we believe the language proposed above will achieve that end while recognizing the need to treat certain specific categories of information as confidential. On the other hand, we believe restricted access to information is counter-productive. For example, secrecy concerning NERC enforcement matters has undercut NERC's effectiveness as an enforcement entity. Limited information access has made it extremely difficult for industry participants either to determine whether similar violations have been treated consistently or to use such decisions as guidance for their own decisions. Further, by conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what

enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. NWCP believes it would be a grave mistake for the ROP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the ROP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain firm guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only a few specifically-defined entities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the ROP Team follow the WECC Task Force's lead on this issue. On this score, we are also concerned that the ROP Team has not spelled out how FERC-designated CEII is to be handled. Given that any Exception Request may ultimately wind up as an appeal to FERC, we believe it is sensible to determine how that information is to be handled at the outset of the process. Perhaps FERC-designated CEII can be added as a category of Protected FOIA Information by including a specific reference to the CEII rules in the definition of Protected FOIA Information. Similarly, the current definition includes the ambiguous phrase "which would be lost." This should be rephrased to reference "protected status would be lost," because the concern is not with the loss of the information itself, but with the loss of the non-public status of information. 4. We believe the ROP Team should include a provision requiring each RE and NERC to post publicly a summary of the status of each Exception Request, providing the status of the request and the anticipated date for action on each step of the Exception process. Such a posting mechanism will improve the accountability of NERC and the REs, and allow the industry to track the progress of Exception Requests. We believe a NERC-resident tracking, reporting, and notice software application would be the best foundation for these requirements. In such a system, the submitting entities could access, read only, all information related to the status of their request, much as shippers can now view the delivery status of a Federal Express package electronically. We also suggest that the ROP Team specify the information that must be included in such a tracking system based on the specific steps identified in Section 5 of the Rules of Procedure. At a minimum, the milestones would include: (a) the Exception Request (ER) has been received; (b) the ER has been assigned to a named staff lead for initial screening; (c) a request for additional information for screening or for substantive review has been issued; (d) the ER has been accepted or denied, or partially accepted and partially denied; (e) an appeal of the determination made in (d) has been filed; and, (e) the status and resolution of any appeal. Using such an application, the REs would enter and maintain all applicable information generated at their level and NERC would enter and maintain all applicable information generated at its level. NERC and the REs could track exceptions and generate reports as appropriate. Such a tracking system will not only keep affected industries informed, but should provide an incentive for the reviewing bodies to act within the time limits specified by the ROP Team and a metric by which reviewing body timeliness can be easily measured. On this score, we note that entities who have self-reported violations of Reliability Standards are required to include specific milestones in their mitigation plans, so that the violations are resolved in a timely manner. It is not unreasonable to expect NERC and the REs to comply with similar milestones in addressing Exception Requests.

Yes

NWCP respectfully submits the following additional comments: 1. Amendment Process. NWCP views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, NWCP believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. We agree with the approach of the ROP Team so far, which has been to treat the Exception Process as part and parcel of the BES Definition, and to move the approval processes for the BES Definition and the Exception process in tandem. We are concerned, however, that the ROP's current draft allows the Exception procedures to be amended through the process specified in the NERC Bylaws and Rules of Procedure rather than through the Standards Development Process. Because amendments under the Bylaws and Rules of Procedure can be instituted with substantially less industry input than the Standards Development Process, we are concerned that amendments to the Rules of Procedure could undermine the effectiveness of the BES Definition in the future. Compare NERC Bylaws Art. XI, § 2 & Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). See also Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743

directed the ERO to revised the definition of “bulk electric system” through the NERC Standards Development Process” (emph. added)). Accordingly, while we recognize that the Exception Process has been placed in the NERC Rules of Procedure, we believe that future changes to the Exception Process should be subject to additional procedural protections to ensure the kind of industry participation that has improved the Exception process developed by the ROP Team. Specifically, future changes to the Exception process should require industry input, industry comments, and industry participation in the process of approving changes, such as a super-majority support requirement. 2. In our previous comments, we expressed the need for dispute resolution at the RE level. We believe the Technical Review Panel provided in Section 5.3 of the proposed Rules of Procedure meets this need and we therefore support these provisions. 3. We are concerned that Section 2.12, which defines “Exception Request Form,” imposes no limit on the amount of information that can be demanded by the REs in addition to the requirements of the NERC template of material required to support an Exception Request. We suggest that the ROP Team add qualifying language to limit this discretion. For example, the ROP Team could redraft the definition by changing the “provided” clause to read: “provided, that the Exception Request Form must include Section III.B as adopted by NERC and may require additional information only if reasonably required by the RE to address conditions specific to its interconnection or geographic area.” 4. There is some inconsistency between Section 5.2.2, which speaks of the RE providing “notice” of its recommendation concerning the Exception Request and Section 5.2.3, which uses the term “Recommendation,” with no reference to “notice.” Because the two sections are intended to work in tandem, the ROP Team should be sure to use consistent terminology in the two sections. 5. Section 5.3, which governs Technical Review Panels, should make clear that the Technical Review Panel has the authority to review all documents relevant to the Exception Request and that members of the Technical Review Panel must be Eligible Reviewers if necessary to obtain access to Confidential Information. 6. The ROP Team should be careful to clarify what happens in the case of a partial acceptance of an Exception Request. Section 8.0, for example, gives the NERC team reviewing an Exception Request determination by an RE the option to partially accept or partially reject the Exception Request. The proposed Rules of Procedure, however, do not address important questions such as the extent to which the underlying Elements continue to be subject to NERC rules and how partial acceptances will be handled under the rules governing appeals. In this situation, we recommend that an Exception Request that is partially approved by the RE be bifurcated, with that part of the Exception that is approved by the RE given immediate effect under the rules we describe in our response to Question 1 and the portion that is disapproved being subject to immediate appeal to NERC under Section 8.0. For similar reasons, we are concerned about Section 5.1.6, which appears at the end of Section 5.1 governing the initial screening of Exception Requests. As drafted, Section 5.1.6 would allow an Exception Request that has been partially approved under an initial screening but partially rejected, to move forward in part. We suggest that this provision may be cumbersome in application and that, if an Exception Request is rejected for lack of necessary information, the entire Exception Request should await receipt of the necessary information before moving into substantive review. This will avoid piecemeal processing of a single Exception Request, which under the ROP Team’s rules, will necessarily cover the same or similar Elements in an Exception Request that seeks action on the same grounds for each involved Element. In addition, once bifurcation occurs, the process should include a “catch-up” provision, so that if one part of the recommendation is remanded to the RE and then corrected, the portion that is remanded and corrected should, if possible, be reunited with the remainder of the request, so that the entire request would then proceed on a uniform schedule. 7. The final sentence of Section 5.2.1 requires clarification. The sentence provides that, once an Exception Request has moved to the substantive review stage, the RE “may engage in further discussions concerning possible revisions to the Exception Request.” Although it is not entirely clear what is intended by this provision, we believe it is intended to allow the RE and the Submitting Entity to engage in a dialogue in which the Submitting Entity could revise its Exception Request so as to avoid specific problems identified by the RE. If that is the case, the provision should be modified to read: “. . . may engage in further discussions with the Submitting Entity and the Owner, if different from the Submitting Entity, concerning revision of the Exception Request. If, as a result of these discussions, the Submitting Entity (with the consent of the Owner where the Submitting Entity is different than the Owner) agrees to revise its Exception Request, the revised Exception Request may be submitted for review in accordance with this Section 5.2, and the applicable deadlines for completing substantive review will be calculated from the date of resubmission.” 8. We are also concerned that the appeal process does not clearly define the standard for review of the RE’s Recommendation. We urge the ROP Team to make clear that the technical and factual findings of the RE should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. This approach is also consistent with the requirement of Section 215 of the Federal Power Act (“FPA”) for NERC to defer to the technical expertise of WECC. 16 U.S.C. § 824o(d)(2)-(3) (requiring NERC deference to “technical expertise of a regional entity organized on an Interconnection-wide basis” and to “rebuttably presume” the validity of a standard offered by such a regional entity). Further, to the extent the ROP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. For similar reasons, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. 9. The definition of “Owner” recognizes that an operator of a facility may be different than the owner in

some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner/ Operator" in the text of the Procedures, as opposed to the approach in the current draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 10. Section 6.0 states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. But additional language would be necessary to allow an entity whose interests might be affected by the submission of supplemental information under Section 6 to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. 11. We recognize that if the information relied upon by NERC or an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the impact of the excepted Element has materially changed since the Exception Request was decided. We are concerned, however, that the draft language in Section 11.2, which would require a Registered Entity to report "any change of condition" which could affect the basis for the NERC decision under Section 8.0 is overly broad. Depending on the sensitivity of the analyses relied upon, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any material change of condition which would substantially affect the basis stated by NERC in its decision pursuant to Section 8.0 approving the Exception Request. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element.

Group

Guy Zito

No

The process needs simplification in order to be efficient. The whole process may take over 22 months to be completed as shown in the flowcharts. NERC has failed to address the specific requirements of a key FERC directive contained in Orders No. 743 and 743-A. These Rules of Procedure amendments potentially violate the jurisdictional boundary set between Transmission and local distribution in Federal Power Act (FPA), Section 215, 824(o) and in those Orders. The Regions and NERC must first screen all Elements and facilities presented for exception for the presence of "facilities used in the distribution of electric energy." In our view, and that of FERC, these local distribution facilities must be excluded from the Bulk Electric System (BES) as is specifically required in FPA, Section 215, 824(o), and through reference to the FPA by FERC in Order Nos. 743 and 743-A. This local distribution exclusion from the BES should be automatic upon presentation of appropriate proofs. Only then may NERC apply its various administrative procedures and technical criteria for exempting jurisdictional Transmission Elements and Facilities from the BES, where they may be found not "necessary for operating an interconnected electric energy transmission network." NERC should adopt, in the proposed amendments to the RoP as a potential "first screen", the FERC Seven Factor test, and use it for identifying and excluding any and all "facilities used in the distribution of electric energy." Filing Entities presenting such appropriate proofs should not need to present further evidence to demonstrate that such Elements and facilities are eligible for exclusion from the BES. The presentation of a local distribution determination by a jurisdictional Federal, State or Provincial body, that such Elements or facilities are "facilities used in the distribution of electric energy," represents appropriate proof and is sufficient for said Elements and facilities to be excluded from the BES. Supporting Discussion: Federal Power Act (FPA), Section 215, 824(o), Definitions differentiates between jurisdictional Transmission and non-jurisdictional local distribution as follows: (a) Definitions- For purposes of this section: (1) The term 'bulk-power system' means-- (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. In FERC Order 743-A the Commission stated 69. We agree ... that the Seven Factor Test could be relevant and possibly is a logical starting point for determining which facilities are local distribution for reliability purposes" By adopting this FERC Seven Factor test, the BES SDT will have fulfilled its obligation to respond to these FERC mandates relating to "local distribution" as stated in FERC Order 743: "Determining where the line between 'transmission' and 'local distribution' lies," (¶137), "To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system" (¶139), to establish "[A] means to track

and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition” (¶119). Supporting References: FERC Order 743 observed some believe that “the Commission’s [and by extension NERC’s] proposal exceeds its jurisdiction by encompassing local distribution facilities that are not necessary for operating the interconnected transmission network.” [FERC Order 743, ¶27.] In this regard FERC Order 743 states: At ¶37, Congress specifically exempted “facilities used in the local distribution of electric energy” from the definition. ... Determining where the line between “transmission” and “local distribution” lies, which includes an inquiry into which lower voltage “transmission” facilities are necessary to operate the interconnected transmission system, should be part of the exemption process the ERO develops. And at ¶39, To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system. And at ¶119, ... [W]e believe that it would be beneficial for the ERO in maintaining a list of exempted facilities, to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track exemptions for radial facilities. [Emphasis added] Note that in ¶119 the Commission clearly distinguishes between “radial facilities” and “local distribution” just as it differentiates between jurisdictional radials and non-jurisdictional local distribution facilities in footnote 82: 82 As discussed further below, the Commission uses the term “exclusion” herein when discussing facilities expressly excluded by the statute (i.e., local distribution) and the term “exemption” when referring to the exemption process NERC will develop for use with facilities other than local distribution that may be exempted from compliance with the mandatory Reliability Standards for other reasons.

No

Refer to the response to Question #1. Also, there is a very noticeable gap and lack of transparency on how the exception application will be evaluated and processed. Suggest the ROP team develop a reference/guidance document in order to assist Registered Entities, Regional Entities, and the ERO on how and on what basis an exception application would or should be processed. While the proposed process is repeatable, it is difficult to evaluate if the process will be verifiable because it will depend, for example, how the RE conducts its review of an Exception request. In addition, there is a significant need to provide Applicants greater clarity and improved transparency with regard to how their exception applications will be evaluated by Regional Entities and NERC. Absent some guidance we are concerned that Regional variances will arise during application of the Exception Process within the eight NERC regions. The RoP Drafting Team and/or the BES Standard Drafting Team develop an Applicant’s and Evaluator’s Guidance document to assist Applicants, Regional Entities, and NERC in preparing and evaluating exception applications. For example, the Federal Power Act provides Congress’ vision for a reliable transmission system. Federal Power Act (FPA), Section 215, 824(o), Definitions states, (4) The term ‘reliable operation’ means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements. NERC and the Regions should specifically adopt this Congressional guidance, defining ‘reliable operation,’ as their overriding Technical Principle when evaluating Exception Process applications concerning jurisdictional Transmission Elements and facilities.

Yes

The Procedure for requesting and receiving an exception from the application of the NERC definition of BES may not be applicable because of the obligation to make submissions to the applicable Governmental Authorities in Canada. NERC will have to take into consideration that procedures exist under Canadian jurisdictions which may be quite different from the one proposed. Also, footnote 2 in section 1.2 presumes automatic adherence of Canadian Authorities or the need for its procedure to be submitted to NERC. Instead, it will be necessary that NERC and Canadian Authorities, with the Canadian Entities involved, to come to a common understanding of differences to arrive at an agreement. Those exchanges should aim to ensure reliability across the border while respecting proper jurisdictions. It could be done by addressing reliability in bulk power transfer within (intra) or between (inter) two Balancing Authority Areas, and monitored facilities included in an Interconnection Reliability Operating Limit (IROL). Other criteria must be left to the discretion of the applicable jurisdiction.

No

As stated previously, the Procedure needs to be made more efficient, recognize that applicable Governmental Authorities in Canada may adopt different approaches or methodologies for addressing exceptions to the NERC BES definition. Also refer to the response to Question #1.

No

Refer to the response to Question #2.

Sections 4.5.3 and 4.6 discuss the disclosure of confidential information mandated by or under the rules, laws, or acts within the United States. Suggest that alternate language be used for clarity, or adequate provisions be provided to include other jurisdictions, such as Canada. As stated in previous responses, the Procedure in the document in general, and specifically in the document’s Section 1.3 footnote needs to be made more efficient, and that it needs to be recognized that applicable Governmental Authorities in Canada may adopt different approaches or methodologies for addressing exceptions to the NERC BES definition. In addition, before implementing this process, NERC will have to ensure that they fit all applicable Governmental Authorities frameworks as addressed in the proposed Section 1703 - Challenges to NERC Determinations of BES Exception Requests under ROP Section 509. Section 5.3 should be made to read: “Each Regional Entity shall establish provisions for a Technical Review Panel consisting of not less than five (5) three (3) individuals as appointed by the Board of the Regional Entity. Panel members shall comply with

Subsection 7 of Section 403 of the NERC Rules of Procedure, shall not have participated in the review of the Exception Request, and shall have the required technical background to evaluate Exception Requests.”

Individual

Keith Morisette

Tacoma Power

No

Tacoma Power does not believe that sufficient “due process” is provided in the procedure and proposed amendments. Some type of process allowing for interested third parties to intervene must be included in the Exception process. Decisions about whether a given system or facility should be included or excluded from the Bulk Electric System will need to be uniformly applied throughout the country. As a result, any inclusion exception or exclusion exception determination will have a precedential impact on other entities with similar systems or facilities. In other words, a decision by a Regional Entity in another part of the country could have a precedential and controlling impact on Tacoma Power even though Tacoma Power had no notice, knowledge or ability to intervene in that decision making process. The decision about whether to include or exclude a facility or system could be made without Tacoma Power’s chance to be heard on the matter. Therefore, Tacoma Power recommends that the ROP Team needs to develop a process or mechanism that will allow any interested and/or potentially impacted entity to intervene in some manner or at least submit comments and arguments to ensure it has a say in a determination that may impact it. The mechanism needs to balance the concern that interventions will cause the decision-making process to bog-down and the need for interested and potentially impacted entities to have a chance to interject their arguments and positions relative to the exclusion or inclusion of a system or facility that is similar to their own. The process or mechanism will need to provide for (1) adequate notice so that interested entities will have a reasonable opportunity to learn of exception process that may impact them on a precedential basis; (2) intervention or submission of comments or argument setting forth the concerns and arguments of the interested and potentially impacted entity; and (3) an open process so that interested and potentially impacted entities will have an opportunity to thoroughly and accurately assess the proposed exception and its potential impact to their exception request.

Tacoma Power’s responses are in the response to Question 6.

Tacoma Power has no comment.

Tacoma Power’s responses are in the response to Question 6.

No

Tacoma Power believes some type of process allowing for interested third parties to intervene must be included in the Exception process. Decisions about whether a given system or facility should be included or excluded from the Bulk Electric System will need to be uniformly applied throughout the country. As a result, any inclusion exception or exclusion exception determination will have a precedential impact on other entities with similar systems or facilities. In other words, a decision by a Regional Entity in another part of the country could have a precedential and controlling impact on Tacoma Power even though Tacoma Power had no notice, knowledge or ability to intervene in that decision making process. The decision about whether to include or exclude a facility or system could be made without Tacoma Power’s chance to be heard on the matter. Therefore, Tacoma Power recommends that the ROP Team needs to develop a process or mechanism that will allow any interested and/or potentially impacted entity to intervene in some manner or at least submit comments and arguments to ensure it has a say in a determination that may impact it. The mechanism needs to balance the concern that interventions will cause the decision-making process to bog-down and the need for interested and potentially impacted entities to have a chance to interject their arguments and positions relative to the exclusion or inclusion of a system or facility that is similar to their own. The process or mechanism will need to provide for (1) adequate notice so that interested entities will have a reasonable opportunity to learn of exception process that may impact them on a precedential basis; (2) intervention or submission of comments or argument setting forth the concerns and arguments of the interested and potentially impacted entity; and (3) an open process so that interested and potentially impacted entities will have an opportunity to thoroughly and accurately assess the proposed exception and its potential impact to their exception request.

Yes

Tacoma Power’s responses below may be used in consideration of some questions above. DEADLINES: Tacoma Power is concerned about some of the description of deadlines and time periods for actions in the procedures. For example, Section 5.1.3 contains a requirement that the Regional Entity will “typically” complete its initial screening within 60 days. Using the ambiguous word “typically” allows unlimited boundaries and discretion by the Regional Entity. We encourage the ROP Team to strike the word “typically,” forcing the Regional Entity to notify and explain the exceptional circumstances that prevented it from meeting the deadline. Similarly, Section 5.0 allows a Regional Entity, unable to complete the initial screening, to set an alternative time period “objective.” We encourage the ROP Team to strike the word “objective,” since it removes the needed firmness of the new time period that is being set. TRACKING SYSTEM: Tacoma Power recommends that the procedures create a web-based tracking system. The Regional Entities must be required to post on their websites a list of Exception Requests received, a brief description of the Exception Request sufficient to give all interested entities notice of the substance of each Exception Request and the current status of the Exception Request. As we have described in our responses to Questions 1 and 5 above, adequate notice is important to the entities to allow the tracking of Exception Requests for systems and facilities similar to their own and the importance of precedential impacts from those Exception Requests. SINGLE PIECE OF EVIDENCE: Tacoma

Power does not agree with the following sentence in Section 3.2, "No single piece of evidence provided as part of an Exception Request or response to a request will be solely dispositive in the determination of whether an Exception Request shall be approved or disapproved." We encourage the process to evaluate all of the evidence submitted by the Submitting Entity and not a subset of the evidence in its determinations. We do not believe the language clearly conveys this intent and offer the following replacement language, "Examination of an Exception Request shall reasonably consider all of the evidence submitted and base its conclusion on the totality of the evidence and not any subset of the evidence viewed in isolation."