

Compliance Monitoring Authority and Registered Entity Obligations Regarding Collection of Data and Information Necessary to Assess Compliance with Approved Reliability Standards

In preparation for your upcoming monitoring engagement, we wanted to answer questions you may have regarding our compliance monitoring authority and data gathering requirements. We look forward to meeting with you and working together to ensure a reliable bulk power system.

Background Information

On July 20, 2006, the Federal Energy Regulatory Commission (FERC) issued an order in Docket No. RR06-1-000 certifying the North American Electric Reliability Corporation (NERC) as the nation's Electric Reliability Organization (ERO) under Section 215 of the Federal Power Act. The FERC Order defines the authorities and responsibilities of the ERO, approved Regional Entities, and the bulk power system owners, operators, and users subject to FERC and ERO jurisdiction.

The U.S. Energy Policy Act (EPA) of 2005 authorized the creation of an ERO. The EPA of 2005 was triggered in part by concerns generated by the August 2003 blackout that affected 40 million people in the midwestern and northeastern United States and 10 million people in eastern Canada. As the ERO, NERC has the authority to develop and enforce reliability standards that apply to all owners, operators, and users of the bulk power system, rather than relying on voluntary compliance.

Data Access

On April 19, 2007,¹ FERC issued an order approving the NERC Compliance Monitoring and Enforcement Program (CMEP) and eight Regional Entity delegation agreements. This approval gives the Regional Entities the authority to carry out compliance activities on behalf of NERC.

Of particular note are FERC's findings in Order 672:

The Commission agrees with commenters that, to fulfill its obligations under this Final Rule, the ERO or a Regional Entity will need access to certain data from users, owners and operators of

¹ North American Electric Reliability Council, et. al, 119 FERC ¶ 61,060 (2007).

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the Bulk-Power System. Further, the Commission will need access to such information as is necessary to fulfill its oversight and enforcement roles under the statute.²

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. Title 18, Conservation of Power and Water Resources, Part 39 specifically addresses the rules concerning certification of the ERO and the procedures for the establishment, approval, and enforcement of Electric Reliability Standards.

Section 39.2 of the regulations, 18 C.F.R. § 39.2 (2008), includes the following requirement:

(d) Each user, owner or operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall provide the Commission, the Electric Reliability Organization and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by the Commission and set out in the Rules of the Electric Reliability Organization and each applicable Regional Entity. The Electric Reliability Organization and each Regional Entity shall provide the Commission such information as is necessary to implement section 215 of the Federal Power Act.

Also, the NERC CMEP contains provisions regarding the collection of data and information including the processes used in the event such data is not provided in a timely manner.

The CMEP states:

Compliance monitoring processes require timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the CEA may execute the steps described in Attachment 1, Process for Non-submittal of Requested Data.

Registered entities may be assessed the most severe violation if the requested information or data is not provided.

Note: Requests for confidential treatment of information must conform to the requirements set forth in Section 1500 of the NERC Rules of Procedure, as may be amended from time to time. You must communicate with your regional compliance manager any data or documents with respect to which access of information cannot be supplied on the grounds of confidentiality arising under requirements of agencies other than FERC, such as NRC, the Coast Guard, and the Environmental Protection

² Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 114, order on reh'g, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).



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Agency. The communication must be made in writing, with an explanation concerning the information and the specific grounds for not providing the information, including references to specific regulations or rules limiting or prohibiting access to information. This must be communicated at least thirty (30) days before the monitoring engagement.

In carrying out the ERO obligations, NERC and Regional Entity staff members will require access to company documents and may request copies of documents that they will retain for further analysis. Registered entities are required to cooperate fully with the monitoring team and to facilitate the monitoring activities as requested.

Confidentiality of Information

Regional Entity and NERC staff members who perform compliance monitoring under the ERO authority operate under ERO-approved non-disclosure agreements and will decline to sign an individual company's confidentiality agreement. Volunteers or contractors on the monitoring team are required to sign a confidentiality agreement that obligates them to comply with the NERC Rules of Procedure, Section 1500. The confidentiality of information provisions applicable to NERC and the Regional Entity staff is set forth in Section 1500 of NERC's Rules of Procedure, as may be amended from time to time.

