
UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

**Mandatory Reliability Standards for the
Bulk-Power System**

Docket No. RM06-16-000

North American Electric Reliability Corporation

Docket No. RR08-1-000

**COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO THE COMMISSION'S FEBRUARY 21, 2008 ORDER**

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May 16, 2008

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ATTACHMENTS

ATTACHMENT 1: PROPOSED REVISIONS TO SECTION 1600 OF THE NERC RULES OF PROCEDURE – CLEAN

ATTACHMENT 2: PROPOSED REVISIONS TO SECTION 1600 OF THE NERC RULES OF PROCEDURE – REDLINED

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) submits this filing in compliance with the directives in the Commission’s Order issued February 21, 2008, in Docket Nos. RM06-16-000 and RR08-1-000.¹ The February 21 Order addressed NERC’s October 12, 2007 filing for approval of an amendment to the NERC Rules of Procedure (“ROP”) to add a new Section 1600. Section 1600 would establish a process for NERC or a Regional Entity to issue requests for data or information.² In the February 21 Order, the Commission conditionally approved proposed Section 1600, but directed NERC to make certain revisions to Section 1600 to be submitted in a compliance filing within 90 days of the February 21 Order.³ The February 21 Order also stated that to the extent NERC were unable to make a compliance filing addressing the Commission’s directives within 90 days, it should supplement its compliance filing with a status report detailing the progress made in developing procedures in response to the directives.⁴

In this compliance filing, NERC is submitting revisions to Sections 1601, 1602, 1603 and 1604 in response to the directives in PP 17 and 19 of the February 21 Order, and a new Section 1606 in response to the directive in P 16. **Attachment 1** and **Attachment 2** to this filing contain, respectively, clean and redlined versions of Section 1600 of the ROP with the proposed revisions.

¹ *Order Conditionally Approving Amended Rules of Procedure*, 122 FERC ¶61,142 (2008) (“February 21 Order”). The Commission directed that any future filings relating to Docket No. RR08-1-000 should be filed in Docket No. RM06-16-000 as well. February 21 Order at P1 n. 1.

² February 21 Order at P 1.

³ *Id.*

⁴ February 21 Order, Ordering Paragraph (B).

NERC has been unable to complete development of procedures to allow the review of federal agency data under Section 1600 without waiving Freedom of Information Act (“FOIA”)⁵ exemptions that may be available for the data, as required by P 18 of the February 21 Order. NERC is therefore providing a status report on its progress in addressing this directive, and anticipates being able to submit a proposed revision to Section 1600, or an alternative solution, in response to this directive by August 14, 2008 (*i.e.*, 90 days from the date of this filing).

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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III. DEVELOPMENT OF PROPOSED REVISIONS TO SECTION 1600

Following receipt of the February 21 Order, NERC drafted proposed revisions to Section 1600 of its ROP to address the directives in PP 16, 17 and 19. The proposed revisions were posted on NERC’s website for stakeholder comment beginning April 8, 2008. Six sets of

⁵ 5 U.S.C. §552 (2000).

comments were received.⁶ Based on the comments received, NERC made certain changes to its posted revised text of Section 1600. While all of the comments submitted were constructive and well-considered, a number of the comments proposed revisions to Section 1600 that went beyond the scope of the revisions directed by the February 21 Order. As this filing is a compliance filing in response to the specific directives in the February 21 Order, NERC does not believe it should propose substantive changes to Section 1600 in this filing other than for the purpose of complying with the Commission's directives in that Order. However, NERC will continue to consider all the comments that were received as it proceeds to implement Section 1600 through the issuance of requests for data and information, pursuant to its provisions, to owners, operators and users of the bulk power system, and as NERC considers, on an ongoing basis, the possible need to propose additional revisions to Section 1600 in light of experience.

The proposed revisions to Section 1600, as modified in response to the comments received, were approved by the NERC Board of Trustees at its May 7, 2008 meeting.

With respect to P 18 of the February 21 Order, NERC has initiated discussions with the Bonneville Power Administration (whose comment on NERC's original October 12, 2007 filing resulted in the directive in P 18) and other interested entities, but has not been able to finalize development of an acceptable solution to address the FOIA-related concern. NERC's progress and schedule for developing an acceptable solution in response to P 18 are discussed further in Section V of this filing.

⁶ Comments were received from the Canadian Electricity Association, Detroit Edison, E.ON U.S., the ISO/RTO Council, Southern Company, and the Tennessee Valley Authority. The comments are posted at: http://www.nerc.com/~filez/rules_of_procedure.html.

**IV. DISCUSSION OF SPECIFIC DIRECTIVES
IN THE FEBRUARY 21 ORDER AND PROPOSED REVISIONS
TO SECTION 1600 OF THE NERC RULES OF PROCEDURE**

In this section NERC discusses the specific directives in PP 16, 17 and 19 of the February 21 Order and the revisions it is proposing to Section 1600 of its ROP in response.

A. Paragraph 16/Proposed New Section 1606

In P 16 of the February 21 Order, the Commission noted that under proposed Section 1600, the NERC Board would have 45 days to approve, modify, or remand for further work a proposed request for data and information, and that parties thereafter would have another 30 days to appeal the NERC Board's decision to issue the request. The Commission further noted that there could be situations in which NERC would require information more quickly than the schedule in Section 1600 would permit. The Commission therefore directed NERC "to clarify how it will gather time-sensitive data or information, and, to the extent necessary, to amend its Rules of Procedure to provide a mechanism to gather time-sensitive data or information."⁷

In response to this directive, NERC is proposing to add a new Section 1606 to the ROP, "Expedited Procedures for Requesting Time-Sensitive Data or Information", as follows:

1606. Expedited Procedures for Requesting Time-Sensitive Data or Information

1. In the event NERC or a regional entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the bulk-power system, or to comply with a directive in an order issued by the Commission or by another ERO governmental authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.

⁷ February 21 Order at P 16.

2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.
3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or proposed modification to a previously-authorized request for data or information shall include the information specified in paragraph 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.
4. The provisions of paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without board approval, such changes shall require board approval if a reporting entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the ERO governmental authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's web site.

The expedited procedures specified in Section 1606 may be used only if authorized by the NERC Board of Trustees prior to activation of these procedures (Section 1606.1). Before posting the proposed expedited request (or modification to a previously authorized request) for public comment, NERC will provide the proposed request to the Commission's Office of

Electric Reliability, no less than two days nor more than 21 days prior to the public posting, with the specific period to be determined based on what is reasonably possible under the circumstances (Section 1606.2).⁸ The submission to the Office of Electric Reliability will include an explanation of why it is necessary to use the expedited procedures (Section 1606.2). The proposed expedited request or modification to a previously-authorized request will then be posted for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five days (Section 1606.3). The posting will include an explanation of why it is necessary to use the expedited procedures (Section 1606.3).

Under the expedited procedures of Section 1606, the provisions of paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable⁹, except that (a) if NERC makes minor changes to an authorized request without Board approval, the changes will require Board approval if a reporting entity objects to the changes, in writing, within five days of issuance of the modified request; and (b) Board authorization of the request shall be final unless an affected party appeals the authorization to the ERO governmental authority within five days following the decision of the Board authorizing the request (Section 1606.4).

⁸ The provision of the proposed request for data or information, or modification to a previously-authorized request, to the Office of Electric Reliability prior to public posting is in compliance with the directive in P 19 of the February 21 Order, and is adopted for all requests or modifications to requests in revised Section 1602.1, as discussed below. In footnote 16 of the February 21 Order, the Commission stated “NERC may submit proposed requests for data or information with less than 21 days prior notice in time-sensitive circumstances.”

⁹ Paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 (which were originally 1602.2, 1602.3, 1602.4 and 1602.5 but have been renumbered due to addition of a new Section 1602.1) provide the procedures for modification of a proposed request following the close of the public comment period, NERC Board approval of the proposed request, and the time periods for an entity to appeal minor changes made to a request following Board authorization and to appeal the Board authorization of the request to the ERO governmental authority.

The minimum time periods specified in proposed Section 1606 total five days (at least two days for pre-posting notification to the Office of Electric Reliability and at least five days for public posting of the proposed request). Taking into account time needed to obtain Board of Trustee approval to activate the procedures of Section 1606 and to obtain Board authorization to issue the request for data or information following the public posting period, NERC believes it would be able to issue an expedited request for data or information pursuant to Section 1606 within 14 days after identifying the need to issue the request on an expedited basis.

B. Paragraph 17/Proposed Revised Section 1604.2

In P 17 of the February 21 Order, the Commission specified that if a Regional Entity establishes its own procedures for requesting data or information required to meet its obligations under §215 of the Federal Power Act, the Regional Entity must submit such procedures to NERC and to the Commission for their approval, in accordance with 18 C.F.R. §39.10. The Commission directed NERC to amend Section 1604, “Requests by Regional Entity for Data or Information,” accordingly. In response, NERC is proposing to (i) divide Section 1604 into Sections 1604.1 (concerning Regional Entity requests to NERC for authorization for a request for data or information to be applicable within the footprint of the Regional Entity – there is no change to the original text on this topic) and 1604.2 (concerning development by a Regional Entity of its own procedures for requesting data and information); and (ii) to add text to Section 1604.2 to comply with the directive in P 17 of the February 21 Order. NERC proposes that Section 1604.2 be revised as follows (changes shown in legislative style):

~~The~~ A regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600. Any such regional entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed procedures or proposed changes for approval by the Commission

and any other ERO governmental authorities applicable to the regional entity. The regional entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other ERO governmental authority.

C. Paragraph 19/Proposed New Section 1602.1 and Revised Section 1603

1. Advance Notification to the Commission of Proposed Requests for Data or Information

In P 19 of the February 21 Order, the Commission directed that NERC must notify the Commission, and provide a proposed request for data or information to the Commission, at least 21 days prior to posting the proposed request for public comment:

Consistent with the requirements of section 39.2(d) of the Commission's regulations and given that the Commission may be called upon to exercise its enforcement authority, the Commission believes that it is important for it to receive notification of any requests for data or information issued by NERC or the Regional Entities, prior to the proposed request for data or information being posted for public comment. Therefore, NERC is directed to notify the Commission of, and to provide, any proposed request for data or information at least 21 days prior to its posting for public comment. [Footnote omitted]

In order to incorporate this requirement expressly into Section 1600, NERC proposes to add the following new Section 1602.1:¹⁰

NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with paragraph 1602.2 or issuing the request or modification to reporting entities following approval by the Board of Trustees.

Although P 19 specifies that NERC is to notify "the Commission" and provide any proposed request for data or information at least 21 days prior to posting for public comment,

¹⁰ Original Sections 1602.1, 1602.2, 1602.3, 1602.4 and 1602.5 have been renumbered as 1602.2, 1602.3, 1602.4, 1602.5 and 1602.6, respectively.

NERC has assumed that the Commission does not want the notification and the proposed request to be filed with the Secretary of the Commission in the manner of a formal filing in (or to initiate) a docketed proceeding. NERC based this assumption on (i) the statement in P 19 that “This notification of proposed requests is for informational purposes,” and (ii) the Commission’s specification that the notification and text of the proposed request are to be provided to the Commission in advance of posting for public comment. If NERC were to file the notification and text of the proposed request with the Secretary, the proposed request would thereby become public before being posted for public comment, which NERC believes would be inconsistent with the intent of the directive in P 19.

Accordingly, in proposed Section 1602.1, NERC has provided that the notification and copy of the proposed request for data or information will be provided to the Commission’s Office of Electric Reliability. NERC believes the Office of Electric Reliability is the appropriate recipient of this information at the Commission as it is the Office with direct responsibilities relating to NERC’s reliability standards development, monitoring and compliance activities.

2. Resort to the Commission’s Enforcement Authority in the Event of Non-Compliance with Requests for Data or Information

In the February 21 Order, the Commission stated that “NERC is required to inform the Commission if it determines that one of its rules has been violated or cannot be practically complied with,”¹¹ and that “If appropriate, NERC should make any request for the Commission to enforce a data request through a non-public submission to the Commission’s enforcement staff.”¹² Accordingly, NERC is proposing to revise Section 1603 to add the text shown in legislative style:

¹¹ February 21 Order at P 19.

¹² February 21 Order at P 19 n. 15.

1603. Owners, Operators, and Users to Comply

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information. In the event a reporting entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the reporting entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission's enforcement staff.

Addition of this text to Section 1603 will put owners, operators and users of the bulk-power system on notice that failure to comply with a request for data or information issued by NERC pursuant to Section 1600 may result in exercise of the Commission's enforcement authority against the noncompliant entity.

D. Consistent Use of Defined Term

In Sections 1601 and 1602.6, NERC proposes to change the term “applicable governmental authority” to “ERO governmental authority.” In addition, in the proposed new text in Sections 1604.2, 1606.1 and 1606.4, the term “ERO governmental authority” is used. This change is appropriate to be consistent with Section 200, Definitions, of the Rules of Procedure, which uses the defined term “ERO governmental authority” (not “applicable governmental authority”) and to ensure consistent use of this term throughout Section 1600 and the rest of the ROP.¹³

¹³ ERO governmental authority” is defined in Section 200 of the ROP as “a government agency that has subject matter jurisdiction over the reliability of the bulk power system within its jurisdictional territory. In the United States, the ERO governmental authority is the Federal Energy Regulatory Commission. In Canada, the ERO governmental authority resides with applicable federal and provincial governments who may delegate duties and responsibilities to other entities. Use of the term is intended to be inclusive of all applicable authorities in the United States, Canada, and Mexico, and is not restricted to those listed here.”

V. STATUS REPORT ON DEVELOPMENT OF RESPONSE TO PARAGRAPH 18 OF THE FEBRUARY 21 ORDER

In P 12 of the February 21 Order, the Commission noted the following comment submitted by the Bonneville Power Administration (“Bonneville”) concerning proposed Section 1600:

Bonneville states that it is concerned that its ability to protect information under the Freedom of Information Act (FOIA) could be affected by NERC’s proposed section 1600. Bonneville points out that as a federal agency it is subject to FOIA and that under FOIA, release of information to an external party generally waives any privileges against disclosure with respect to subsequent requests to the federal agency for that same information. If disclosure of such information to NERC and any applicable Regional Entities did constitute a waiver under FOIA, Bonneville contends that waiver would frustrate the purpose of the confidentiality provision of proposed section 1600. Bonneville also suggests that external reviewers of critical federal security information may need to obtain federal security clearances before federal entities can allow such review. Bonneville states that it is willing to work with the Commission and NERC to find a way to meet NERC’s needs for data and information while also protecting the confidential nature of sensitive federal information. [Footnote omitted]

In P 18, the Commission addressed Bonneville’s comment:

In response to Bonneville, however, we agree that a governmental entity subject to FOIA should not be required to submit sensitive information that could be deemed a waiver of a FOIA exemption that is otherwise available. Accordingly, we direct NERC to work with Bonneville and other federal agencies listed on NERC’s compliance registry to develop procedures that would allow the review of the requested information without risking waiver of FOIA protection. NERC should submit a compliance filing within 90 days of the date of this order detailing procedures to allow the review of federal agency data under section 1600. The Commission recognizes, however, that developing such procedures may take longer than 90 days. If necessary, NERC may instead file a status report 90 days from the date of this order detailing its progress in developing such procedures. [Footnote omitted.]

Following receipt of the February 21 Order, NERC initiated discussions with Bonneville (and others) on this issue in the NERC Legal Advisory Committee.¹⁴ A series of discussions

¹⁴ As stated in the Charter of the Legal Advisory Committee, which was approved by the NERC Board on May 2, 2007, the purposes of this Committee are (i) to provide a forum for discussing

concerning this issue have been held over the last several months between and among participants in a NERC Legal Advisory Committee task force who are examining confidentiality issues generally and specifically. A white paper is being developed that will address, among other things, the federal agency FOIA protection issue. NERC believes ongoing discussions and the development of the white paper will further the objective of developing an acceptable solution. However, a specific proposal could not be finalized in time for presentation to the NERC Board for approval at its May 7, 2008 meeting. Based on progress to date, NERC anticipates a specific proposal can be developed by NERC and interested stakeholders and posted for public comment sufficiently in advance of the next regularly-scheduled meeting of the NERC Board (July 29-30) in order for the proposed resolution to be presented to the Board for its approval at that meeting. As a result, NERC anticipates it will file either proposed revisions to Section 1600 of the ROP with the Commission for its approval, or an alternative solution, on or before August 14, 2008 (*i.e.*, 90 days following the date of this compliance filing).

VI. CONCLUSION

The North American Electric Reliability Corporation respectfully requests that the Commission (1) accept this filing as compliance with the directives of the Commission's February 21, 2008 Order, and (2) approve the proposed revisions to Section 1600 of the NERC Rules of Procedure shown in **Attachment 2** to this filing.

legal issues involving NERC activities, (ii) to alert NERC and NERC stakeholders to emerging legal issues concerning NERC matters, (iii) to provide advice to the NERC General Counsel, and (iv) to develop common legal products related to reliability for the benefit of the NERC stakeholders. The Committee Charter also provides that membership on the Committee is open to attorneys for NERC stakeholders and shall be balanced among sectors.

Respectfully submitted,

/s/ David N. Cook

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 16th day of May, 2008.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
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SECTION 1600 — REQUESTS FOR DATA OR INFORMATION

1601. Scope of a NERC or Regional Entity Request for Data or Information

Within the United States, NERC and regional entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission’s regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and as may be granted by ERO governmental authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

1602. Procedure for Authorizing a NERC Request for Data or Information

1. NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission’s Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with paragraph 1602.2 or issuing the request or modification to reporting entities following approval by the Board of Trustees.
2. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
 - 2.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information (“reporting entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “confidential,” “critical energy infrastructure information,” “aggregating” or “identity masking”); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.

- 2.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.
3. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC's evaluation of the comments and recommendations, to the Board of Trustees.
4. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
5. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
6. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the ERO governmental authority.

1603. Owners, Operators, and Users to Comply

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information. In the event a reporting entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the reporting entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission's enforcement staff.

1604. Requests by Regional Entity for Data or Information

1. A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600.
2. A regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600. Any such regional entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed

procedures or proposed changes for approval by the Commission and any other ERO governmental authorities applicable to the regional entity. The regional entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other ERO governmental authority.

1605. Confidentiality

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

1606. Expedited Procedures for Requesting Time-Sensitive Data or Information

1. In the event NERC or a regional entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the bulk-power system, or to comply with a directive in an order issued by the Commission or by another ERO governmental authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.
2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.
3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or

proposed modification to a previously-authorized request for data or information shall include the information specified in paragraph 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.

4. The provisions of paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without board approval, such changes shall require board approval if a reporting entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the ERO governmental authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's web site.

SECTION 1600 — REQUESTS FOR DATA OR INFORMATION

1601. Scope of a NERC or Regional Entity Request for Data or Information

Within the United States, NERC and regional entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission’s regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and as may be granted by ~~applicable~~ERO governmental authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

1602. Procedure for Authorizing a NERC Request for Data or Information

1. NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission’s Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with paragraph 1602.2 or issuing the request or modification to reporting entities following approval by the Board of Trustees.

12. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.

12.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information (“reporting entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “confidential,” “critical energy infrastructure information,” “aggregating”

or “identity masking”); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.

- 12.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.
23. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC’s evaluation of the comments and recommendations, to the Board of Trustees.
34. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
45. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
56. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the [applicable ERO](#) governmental authority.

1603. Owners, Operators, and Users to Comply

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information. [In the event a reporting entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the reporting entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission’s enforcement staff.](#)

1604. Requests by Regional Entity for Data or Information

1. A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600.
2. ~~The~~A regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural

elements as are included in this Section 1600. Any such regional entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed procedures or proposed changes for approval by the Commission and any other ERO governmental authorities applicable to the regional entity. The regional entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other ERO governmental authority.

1605. Confidentiality

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

1606. Expedited Procedures for Requesting Time-Sensitive Data or Information

1. In the event NERC or a regional entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the bulk-power system, or to comply with a directive in an order issued by the Commission or by another ERO governmental authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.
2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.

3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or proposed modification to a previously-authorized request for data or information shall include the information specified in paragraph 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.

4. The provisions of paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without board approval, such changes shall require board approval if a reporting entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the ERO governmental authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's web site.