

Summary of Proposed Revisions to NERC Rules of Procedure – Section 500 and Appendices 2, 5A and 5B

NERC is proposing amendments to the NERC Rules of Procedure (ROP) in section 500 and Appendices 2, 5A and 5B. If approved by the NERC board of trustees (BOT), these amendments will be filed with the appropriate regulatory authorities for approval.

A detailed summary of the proposed amendments on a section-by-section basis is provided. Additionally, this document includes a description of outreach efforts associated with these proposed changes, including stakeholder comments received on the proposed amendments and redlined versions of the proposed amended ROP.

Previously, proposed new ROP section 509 was filed with FERC for approval on January 25, 2012, in NERC's filing for approval of a proposed procedure for requesting exceptions from the definition of the Bulk Electric System. Proposed revisions to ROP Appendix 2 were filed with FERC for approval on January 25, 2012 and May 7, 2012. In addition, proposed revisions to Appendix 5B were filed with FERC for approval on May 7, 2012. These filings have not been acted on by FERC. The redlined documents being provided here assume that these previously-filed revisions are accepted, and show, in redline, only the proposed amendments now being presented for approval.

Background

During 2011, several teams or working groups were formed to conduct reviews of the ROP and Appendices to identify any amendments that should be considered based on ongoing experience, changes in strategy or other processes, stakeholder concerns, and other factors.¹ That effort resulted in the amendment of a number of sections and appendices of the NERC ROP, which were approved by the NERC BOT in March 2012, filed with FERC on May 7, 2012 in Docket No. RR12-8-000 and remain pending before FERC.

The majority of the changes to section 500 and Appendix 5A contained herein were developed concurrently with the above referenced changes and were included in the November 7, 2011 – December 22, 2011 posting and comment period.² However, unlike the set of changes filed

¹ The teams included a working group of NERC and Regional Entity Compliance Program personnel and a working group of NERC and Regional Entity Legal personnel. Reviews of ROP sections and Appendices relevant to their activities were also undertaken by NERC departments including Standards, Organization Registration and Certification, and Event Analysis and Investigations. These working groups and internal reviews produced numerous proposals for amendments to the ROP and Appendices. The proposals were carefully reviewed by NERC management to eliminate proposals that, while they may have represented the proponent's view of a better way to state the particular provision, did not appear to be warranted based on experience or on developing changes in processes, or as a clear improvement in the clarity of the text of the provision. Versions of the ROP documents reflecting the results of this top-level review were circulated to participants for additional comment.

² Proposed revisions to section 500 and Appendix 5A were posted for stakeholder comment from November 7, 2011 to December 22, 2011 (as well as other ROP sections and Appendices). Numerous comments were received on this posting. Based on the comments, additional revisions were made to the proposed amendments.

with FERC on May 7, 2012, the revisions to section 500 and Appendix 5A were not presented to the NERC BOT in March 2012, in order to allow for additional discussions with stakeholders.

These discussions were held from March through May 2012 and included exchanges of drafts with Regional Entity groups, individual stakeholders as well as a meeting with the NERC Compliance and Certification Committee and Organization Registration and Certification Subcommittee. These discussions resulted in the development of incremental changes to section 500 and Appendix 5A, which are also described below.

Discussion of Proposed Amendments of Significant Interest

A detailed section-by-section summary of the proposed amendments to the ROP and Appendices is provided later in this document. The following discussion describes several proposed amendments that have been of particular interest to stakeholders during the development process as well as the basis and purpose of each change.

Certification review of entities performing delegated or assigned tasks –

This issue was the subject of comments by a number of stakeholders both during the public comment periods preceding the March 2012 BOT meeting and after that time. During the period from March to May 2012, NERC staff worked with several stakeholder groups to explain these revisions and to clarify their scope.

The underlying reliability concern motivating the revisions to the Certification process is that when an entity is evaluated for Certification as a RC, TOP or BA, if the entity has delegated, assigned or contracted or plans to delegate, assign or contract some of its reliability functions to another entity, the Certification Team needs to be able to evaluate the competency of the third party to perform the delegated, assigned or contracted reliability functions; otherwise, the Certification evaluation of the entity will be incomplete. When such arrangements occur, the ERO needs to be able to conduct an appropriate Certification review of the third party's capabilities to perform the delegated certified functions on behalf of the entity that is registering for the certified functions.

This approach reflects current practice and is being memorialized in writing for transparency and clarity. The language also explains the scope of the review process and clarifies that the Certification process is not a recurring evaluation of certified entities or third parties, except in the circumstances contemplated in Appendix 5A. However, the competency evaluation alone does not result in the Certification or Registration of the third party.

Consideration of the proposed amendments was originally placed on the agenda for the February 9, 2012 BOT meeting. However, following discussion at the February 8, 2012 MRC meeting, consideration by the BOT was deferred to the March 14, 2012, BOT conference call, and stakeholders were allowed to submit additional comments subsequent to the February 9, 2012 BOT meeting.

Concurrent Registration or co-Registration –

At the request of stakeholder groups, a provision governing concurrent Registration, also referred as co-Registration, was added. The provision tracks existing precedent of the Federal Energy Regulatory Commission that recognizes the ERO's existing authority to co-register entities.³ The revision is appropriate because it results in all forms of Registration being specifically identified in one location in the ROP for ease of reference.

Summary of Proposed Rule of Procedure Revisions

I. Section 500 – Organization Registration and Certification

Section 501 – A reference to regional reliability organization is removed. The second paragraph is revised for clarification to refer to Certification of Registered Entities that are or are to be registered for specified functions. Language was deleted that focused on entities *applying* to become a RC, TOP or BA because the application itself is not a condition precedent. Appendix 5A lists the entities that are required to be certified.

Section 501.1.1(b) – Replaced “related” with “other” to clarify that parties in a JRO do not need to be “related.”

Section 501.1.3.1 – This section is revised to provide greater specificity with respect to the effective date of an entity's Registration. The effective date will be stated in NERC's notification of Registration and may be a date as agreed between the entity and the Regional Entity that precedes the date of the notification.

Section 501.1.4 and 1.5 – Clarifying changes were made to the language to reflect current practice. The changes in 501.1.4.2, 501.1.4.3 and 501.1.4.4 from “one and only” to “a” are made to clarify rather than to alter the meaning of these provisions.

In section 501.1.4.3 and elsewhere a reference to “Planning Coordinator” was added after “Planning Authority.” Planning Coordinator is a term used in several Reliability Standards and is defined as part of the functional model. Conforming changes will be made to Appendix 2 and Appendix 5B.

Section 501.2 – This section is amended to state that Certification of entities as RCs, TOPs or BAs will include evaluation of the competency of third party entities to which performance of some or all of the reliability functions of the RC, TOP or BA have been delegated, assigned or contracted to perform the delegated, assigned or contracted reliability functions. The evaluation of entities to which some or all of the reliability functions of an RC, TOP or BA have been delegated, assigned or contracted, reflects current practice. The change in the language is needed to memorialize current practice. Some entities may choose to delegate or contract

³ See for example, Order No. 693, P 103; *Southeastern Power Administration*, 125 FERC ¶ 61,294 (2008).

reliability tasks and/or responsibility for compliance with specific Reliability Standards or Requirements to a third party. When such arrangements occur, the ERO conducts an appropriate review of the third party's capabilities to perform the delegated certified functions on behalf of the entity that is registered for the certified functions.

In addition, the text of this section is being revised to replace "all entities with primary reliability responsibilities requiring Certification" with "Reliability Coordinators, Transmission Operators, and Balancing Authorities" in order to expressly identify the reliability functions for which Certification is required.

The amendments to this section have been significantly revised from those originally proposed, in response to stakeholder comments, in order to more clearly state the intention of the amendments.

Section 501.2.1 – Combines current 501.2.1 and 501.2.2, and is amended to refer to entities intending to perform (as well as Registered Entities performing) the functions of RC, TOPs or BAs, since the Certification process applies to entities seeking to perform these functions as well as Registered Entities already performing the functions. Additionally, the revisions to this section provide transparency and clarity with respect to the scope of the review and clarify that the Certification process is not a recurring evaluation of certified entities or third parties, except in the circumstances contemplated in Appendix 5A.

Section 502.2.2 – Revised to correct a typographical error (the number "(6)" should appear after the word "six" rather than before it).

Section 502.2.3.7 (formerly numbered 502.2.2.7) – Revised to state that the Certification Team leader shall confirm that all Certification Team members have completed all required training prior to participation in the Certification evaluation. This change is based on a stakeholder comment on the November 7, 2011 posting.

The numbering for section 502.2.3 was also corrected.

In section 502.2.4, changes were made to eliminate the clause "for which it has demonstrated full competency" as redundant and to remove a reference to Registration issues that are addressed elsewhere in the ROP.

Throughout the text, including but not limited to section 503.2.2.1, the references to Reliability Coordinators, Transmission Operators, and Balancing Authorities were conformed as necessary to list these three reliability functions in this order.

Section 503.3.4 – In this section, which states that NERC and/or the Regional Entity shall evaluate the competency of entities requiring Certification to meet the NERC Certification requirements, a sentence has been added to specify that the evaluation shall include evaluation

of the competency of any entities to which performance of some or all of the reliability functions of a RC, TOP or BA have been delegated, assigned or contracted to perform the delegated, assigned or contracted reliability functions. (See discussion under §501.2, above.) Additionally, the new last sentence in section 503.3.4 has been added, in response to stakeholder comments, to clarify the intent of provisions specifying that a Certification evaluation of a RC, TOP or BA will include evaluation of the competency of third parties performing reliability functions pursuant to delegation, assignment or contract.

Sections 503.3.5.1 and 503.3.5.2(as renumbered) – Deleted references to “NERC/Regional Entity” before “Certification Procedures” as unnecessary. Also added a reference in section 3.5.1 to Appendix 5A, where procedures for onsite visits to the Certification applicant’s facilities are described in greater detail.

Section 503.3.6 – Added this subsection to state the current procedure of notifying an entity of its Certification.

Section 506.4 – (i) Changed “programs” to “Organization Registration and Organization Certification Program,” for clarity. (ii) Revised the text to state that written responses to recommendations in an audit report on the Organization Registration and Organization Certification Programs are due within 30 days of the posting of the final audit report, also for clarity.

Section 507.1 – Changed “related entities” to “other entities” to clarify that parties in a JRO do not need to be “related.”

Section 508.8 – Revised to correct a typographical error.

Section 510 – At the request of stakeholder groups, a provision governing concurrent Registration, or co-Registration was added. The provision tracks existing precedent of the Federal Energy Regulatory Commission that recognizes the ERO’s existing authority to co-register entities.⁴ The revision is appropriate in order that all forms of Registration are specifically identified in one location for ease of reference.

II. Appendix 5A – Organization Registration and Certification Manual

A. Section I – Executive Summary

A number of revisions have been made throughout Appendix 5A for more consistent use of terms and acronyms, such as “BPS,” “RC,” “TOP” and “BA,” and “user, owner or operator” (of the BPS).

⁴ See for example, Order No. 693, P 103; *Southeastern Power Administration*, 125 FERC ¶ 61,294 (2008).

Throughout the text, including but not limited to the Executive Summary, the references to Reliability Coordinators, Transmission Operators, and Balancing Authorities were conformed as necessary to list these reliability functions in this order.

In the section captioned “To Whom Does This Document Apply?” a reference to Planning Coordinator (PC) was added for the reasons discussed above in connection with the summary of the changes to section 501.1.4.

In the section captioned “When did These Processes Begin?” the word “new” was deleted to reflect the fact that both new and existing entities may be candidates for Registration.

The section captioned “Where to Access and Submit Form(s)?” is revised to specify that completed Registration and Certification forms should be sent to the website location and/or individual(s) responsible for Registration and/or Certification at the Regional Entity.

In the section captioned “Roles and Responsibilities,” the descriptions of the roles and responsibilities of NERC and the Regional Entities in the Registration and Certification processes have been revised to be in accordance with current practice, consistent with the current delegation agreements and ROP Appendix 4C.

B. Section II – Introduction to Organization Registration and Organization Certification Processes

The introductory paragraph has been revised to reflect the Regional Entity’s role in identifying Registration candidates and to reflect the terminology used to refer to entities to be certified.

In the section captioned “Organization Registration – Entities Required to Register,” text has been revised to conform to the terminology used in the program, including by adding a reference to “Planning Coordinator.” In the section captioned “Organization Certification,” text has been revised to specify that Certification of a RC, TOP or BA shall include evaluation of the competency of those entities to which performance of some or all of the reliability functions of the RC, TOP or BA have been delegated, assigned or contracted to perform the delegated, assigned or contracted reliability functions. The evaluation of entities to which some or all of the reliability functions of an RC, TOP or BA have been delegated, assigned or contracted is conducted because some entities may choose to delegate or contract reliability tasks and/or responsibility for compliance with specific Reliability Standards or Requirements to a third party. When such arrangements occur, the ERO conducts an appropriate Certification review of the third party’s capabilities to perform the delegated certified functions on behalf of the entity that is registered for the certified functions. The amendments to this section have been revised from those originally proposed, in response to stakeholder comments, in order to more clearly state the intention of the amendments. The language also has been revised to explain the scope of the review process and clarify that the Certification process is not a recurring evaluation of certified entities or third parties, except in the circumstances contemplated in

Appendix 5A. However, the competency evaluation alone does not result in the Certification or Registration of the third party.

C. Section III – Organization Registration Process

In the first line of the section captioned “Overview,” a change has been made in the reference to the Commission’s regulations, for simplification.

The section captioned “Organization Registration Process,” including Figure 1, Organization Registration Process Overview, has been revised consistent with current practice as to the respective responsibilities of NERC and the Regional Entities in the Organization Registration process. These revisions include a revision (in 4.b) to provide that an entity responsible for more than one function will use a single NERC ID, “unless assignment of more than one NERC ID to the entity is approved by NERC.” This revision is based on a stakeholder comment on the November 7, 2011 posting. In item 6, text to reflect the existing practice of co-Registration was added. Also in item 6, references to “related entities” were replaced with “other entities” to clarify the scope of a JRO, as noted above in connection with the summary of changes to section 501.1.1(b). In item 8, a step has been added to specify that if the Regional Entity determines a Registration applicant does not need to be registered as requested in the application, the Regional Entity will notify the entity. This addition is also based on a comment on the November 7, 2011 posting. In item 9, for clarity, the term “business days” replaced a reference to “working Days.” In item 12, the language was modified to expressly require the Regional Entity to advise NERC of the need to register an entity. Figure 1 was updated to provide additional details regarding the process which are currently in practice, including the situation in which an entity does not voluntarily fill out Registration forms (See footnote 1 added to Figure 1).

D. Section IV – Organization Certification Process

In the section captioned “Purpose and Scope,” language has been added to state that the Certification process steps described in Section IV will be conducted for the proposed RC, TOP or BA and, as applicable, for any entities to which performance of some or all of the reliability functions of the RC, TOP or BA have been delegated, assigned or contracted. The language also explains the scope of the evaluation process and clarifies that the Certification process is not a recurring evaluation of certified entities or third parties, except in the circumstances contemplated in Appendix 5A. (See discussion under §II of Appendix 5A, above.)

In the section captioned “Organization Certification Process,” the text describing the Provisional Certification Process has been deleted, since the Provisional Certification Process is no longer needed. In subsection 3, “NERC” was included as an entity having to agree with the entity and the Regional Entity to the timeline. In subsection 4, the text was revised to clarify the circumstances in which changes would trigger additional Certification procedures. In subsection 8c of that section, text is added to specify that the Certification Team (CT) leader will complete the CT roster and will send the roster, with biographical information on the CT

members, to the entity seeking Certification. Additionally, the reference to the Regional Entity as the entity to which an entity undergoing Certification may express its objections to a member of the CT, has been changed to the Certification Team leader. The title of subsection 8d has been revised to state that the subsection is applicable to initial Certifications only. A new subsection 8e has been added to describe the composition of the CT where an existing certified entity has been previously certified. The CT shall be comprised of, at a minimum, representatives from NERC and from the Regional Entity or Entities which have oversight of the entity, and may also include one or more representatives of the existing RC, TOP and/or BA. In subsection 13, the text was clarified to provide flexibility with respect to the requirement that the CT shall conduct at least one on-site visit to the entity's facilities, specifically, to allow the CT to determine, based on consultation with NERC and the Regional Entity, that an on-site visit is not needed. This is appropriate because certain modifications that trigger the need for a review of an entity's Certification may not involve any physical changes that would require an on-site visit. The CT should have the flexibility to make this determination. In Section 15, text is changed to provide that the CT will "give "due consideration" (rather than "assess") any comments it receives on the draft Certification report. This change was made to clarify the nature of the evaluation performed by the CT. In Section 21, text is added to specify that NERC will provide a copy of the Certification report to the entity (or entities in the case of a Coordinated Functional Registration). Additionally, the provision that NERC shall update the Compliance Registry (for a new certification) "prior to the entity going operational" is changed to "in accordance with the Registration rules."

Figure 2 was updated to provide additional details regarding the process which are currently in practice. A footnote is added to specify that the process described in Figure 2 is for new Certifications.

F. Section V – NERC Organization Registration Appeals Process

The title and address of the NERC employee with whom Registration appeals must be filed is revised. Registration appeals should now be submitted to the NERC Director of Compliance Operations.

Section 6 has been revised to reflect that the Regional Entity will not have a role in deciding the Registration appeal to NERC, consistent with the delegation agreements and ROP Appendix 4C.

Figure 3 was updated to provide additional detail.

G. Section VI – NERC Organization Certification Appeals Process

In the section captioned "Organization Certification Appeals Procedure," the title of the NERC employee with whom Registration appeals must be filed is revised. Registration appeals should now be submitted to the NERC Director of Compliance Operations. Subsection 5d has been revised to more clearly describe the actions to be taken by NERC based on the Board of Trustees Compliance Committee's decision on the Registration dispute.

H. Definitions

The definitions were updated by eliminating definitions that are no longer used, and revising others. Conforming changes will be made to Appendix 2 to revise the definition of “NERC Organization Certification” and “Certification” and to eliminate the definition of “Compliance and Certification Manager.”