

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 engagement, Texas RE has important information to share regarding our compliance monitoring authority and data gathering requirements. We look forward to working together to ensure a reliable Bulk Power System (BPS).

Background Information

The U.S. Energy Policy Act (EPA) of 2005 authorized the creation of an Electric Reliability Organization (ERO). The EPA of 2005 was triggered in part by concerns generated by the August 2003 blackout that affected 40 million people in the mid-western and northeastern United States and 10 million people in eastern Canada. 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 ERO under Section 215 of the Federal Power Act. The FERC Order defines the authorities and responsibilities of the ERO, the approved regional entities, and the BPS owners, operators, and users subject to FERC and ERO jurisdiction.

As the ERO, NERC has been assigned the authority to enforce reliability standards on all owners, operators, and users of the bulk power system, rather than relying on voluntary compliance.

Data Access

On April 19, 2007 FERC issued an order in a series of dockets (RRO-06 and RRO-07 series) approving the NERC Compliance Monitoring and Enforcement Program and Regional Entity delegation agreements. This approval gives the Regional Entities the authority to carry out compliance activities on behalf of NERC.

It is important to note FERC's comments in Order 672 paragraph 114:

"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 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."

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* Chapter 39 specifically address the rules concerning certification of the ERO; and procedures for the establishment, approval, and enforcement of Electric Reliability Standards.

18CFR39.2 of the regulations 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 Compliance Monitoring and Enforcement Program (CMEP) contains provisions for the collection of certain data and information including the processes used in the event such data is not provided in a timely manner.

The CMEP states:

“If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**”

In carrying out the ERO obligations, CMEP staff will require access to company documents and may request copies of documents that they will review for further analysis. Entities are required to cooperate fully with the CMEP staff and to facilitate the engagement 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 generally decline to sign an individual company's confidentiality agreement. The obligation for information confidentiality for NERC and the Regional Entity staff is outlined in Section 1500 of NERC's Rules of Procedure as approved by FERC.

Also, NERC requires all CMEP staff, contractors, and volunteers that conduct compliance engagements to undergo a background investigation.

Again, we look forward to working with your company and appreciate your full cooperation. If you have any questions regarding this information or your upcoming engagement, please contact the assigned engagement Team Lead.