

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Compliance Guidance Policy

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RELIABILITY | ACCOUNTABILITY



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Executive Summary

A key factor in the success of compliance monitoring and enforcement of mandatory standards rests on a common understanding between industry and Regional Entities and NERC (ERO Enterprise) Compliance Monitoring and Enforcement Program (CMEP) staff on how compliance can be achieved and demonstrated. For many of NERC's Reliability Standards (standards), this is straightforward. For others, it remains a concern.

In May 2015, a Compliance Guidance Team (Team) was formed by the Member Representatives Committee (MRC), with support from the NERC Board of Trustees (Board), to consider approaches useful in providing guidance for implementing standards, and develop a policy proposal for the purpose, development, use, and maintenance of this guidance.

The Team identified two purposes for guidance: (1) to assist registered entities with the implementation of standards and (2) for the ERO Enterprise to provide direction to ERO Enterprise CMEP staff. The Team also established a set of principles for the development of guidance and is recommending the development of the following:

- Implementation Guidance
- CMEP Practice Guides

Implementation Guidance provides a means for registered entities to develop examples or approaches to illustrate how registered entities could comply with a standard¹ that are vetted by industry and endorsed by the ERO Enterprise. The examples provided in the Implementation Guidance are not exclusive, as there are likely other methods for implementing a standard. The ERO Enterprise's endorsement of an example means the ERO Enterprise CMEP staff will give these examples deference when conducting compliance monitoring activities. Registered entities can rely upon the example and be reasonably assured that compliance requirements will be met with the understanding that compliance determinations depend on facts, circumstances, and system configurations.

CMEP Practice Guides differ from Implementation Guidance in that they address how ERO Enterprise CMEP staff executes compliance monitoring and enforcement activities, rather than examples of how to implement the standard. They are developed and maintained by the ERO Enterprise, although in some cases, the ERO will hold policy discussions with industry stakeholders. CMEP Practice Guides will be posted on the NERC website for transparency.

In order to ensure that all Implementation Guidance and other information related to a standard are easily accessible, the Team is proposing a "one-stop shop" on the NERC website where all guidance and information on a particular standard would be located.

The Team believes the proposed policy will bring multiple benefits to industry, including the development of Implementation Guidance by registered entities, a simple process for sharing endorsed implementation methods, collaboration with other registered entities and the ERO Enterprise, and transparency of Implementation Guidance and CMEP Practice Guides.

¹ Although the term standard is used, Implementation Guidance could also apply to a specific requirement or requirements within the standard.

Introduction

Purpose

A key factor in the success of compliance monitoring and enforcement of mandatory standards rests on a common understanding between industry and ERO Enterprise CMEP staff on how compliance can be achieved and demonstrated. For many standards, this is straightforward. For others, it remains a concern. Moreover, some standards are written deliberately to enable a variety of approaches to compliance as the nature of the desired end-state does not lend itself to singular or clear cut solutions given the range of system configurations and potential responses to achieving the reliability goal.

Since the inception of NERC's CMEP, the ERO Enterprise and registered entities have strived to bring clarity and certainty to all parties through a variety of means, some more successful than others. The starting point for understanding the standard is the plain language of the standard and all of the supporting materials developed in the process leading to the approval of the standard (i.e., technical papers, webinars with drafting team members, FAQs, and Reliability Standard Audit Worksheets (RSAWs)). To the extent that the accompanying documentation answered all participants' questions, nothing further was needed. However, disputes have arisen about the meaning of the words in some standards, leading to requests for clarification or revisions to the standard. To help fill the gap, the ERO has issued a number of supplementary documents over time, including Compliance Application Notices (CANs) and Compliance Application Reports (CARs). However, at times, these documents were perceived by some in industry to change the scope of the standard or provide interpretations to audit staff in areas of ambiguity.

More recently, with the addition of more results-based standards, which inherently allow for greater flexibility by entities in responding to standards and requirements, industry has stepped up with informal best practice guides and other work products to address compliance uncertainty. These range from "good ideas" from one or a few entities, to full-blown collaborative development of guides based on the work of committees of experts under the sponsorship of an organized group, e.g., the North American Transmission Forum (NATF). The role and status of these efforts have been unclear in relation to meeting compliance with standards and CMEP practices.

Also, with the controversy surrounding guidance memorandums issued in relation to CIP Version 5, which were later withdrawn, the ERO proposed developing a policy on compliance guidance to bring order and clarity to these disparate elements. Under the sponsorship of the MRC with support from the Board, the Team was formed and charged with bringing a policy paper to the Board of Trustees by its November 2015 meeting regarding the purpose, development, use, and maintenance of compliance guidance. The mandate for the Team, including its members, is included in **Appendix A**.

Given the above, the Team focused on how to reduce controversial approaches and provide the industry and the ERO Enterprise with additional clarity on implementing standards.

Principles for Compliance Guidance

As a starting point, the Team considered and built upon the principles provided in the April 2, 2015 MRC Informational Session agenda package², and established the following principles:

- Guidance documents cannot change the scope or purpose of the requirements of a standard.
- The contents of guidance are not the only way to comply with a standard.

² http://www.nerc.com/gov/bot/MRC/Agenda%20Highlights%20nad%20Minutes%202013/MRC_Info_Session_Agenda_Pkg_042015.pdf
(see Agenda Item 4d)

- Compliance expectations should be made as clear as possible through the standards development process which should minimize the need for guidance after final ballot approval of a standard.
- Forms of guidance should not conflict.
- Guidance should be developed collaboratively and posted on the NERC website for transparency.

Furthermore, the Team agreed upon the following:

- There should be a finite and limited set of guidance tools that are well understood and are organized to facilitate the use and implementation of the guidance.
- All forms of guidance related to the same standard should be coordinated and collected in one location.
- To the extent that guidance does not address all of the issues that arise, consideration should be given to revising the standard in question.
- NERC and the Regional Entities will exercise professional judgement³ in an objective manner when evaluating all methods or approaches to comply with a standard and maintain processes to ensure its independence with regards to the development of guidance by registered entities.
- As guidance cannot expand the scope or purpose of a standard, there are other methods outside the CMEP process (i.e., feedback loops to the Standards Committee and NERC standards department, discussions with the entity) for addressing risks that are not subject to the standard.

Based on the above principles, the Team identified two purposes for guidance: (1) to assist registered entities with the implementation of standards and (2) for the ERO Enterprise to provide direction to its CMEP staff, and is recommending the development of the following:

- Implementation Guidance
- CMEP Practice Guides

Implementation Guidance provides examples for implementing a standard, while CMEP Practice Guides provide direction to ERO Enterprise CMEP staff on executing compliance and enforcement activities.

³ For example, ERO Enterprise CMEP staff playing a role in determining whether there was any non-compliance with a standard may have prior experience with the subject matter and specific ways in which compliance was achieved. The ERO Enterprise should have practices which prevent bias, preserve objectivity, in final determinations of scope or compliance within its CMEP activities.

Implementation Guidance

Purpose

Implementation Guidance provides a means for registered entities to develop examples or approaches for ERO Enterprise endorsement to illustrate how registered entities could comply with a standard.

Description

Implementation Guidance is defined as “providing examples or approaches within the range of compliance solutions developed in a transparent and collaborative manner for registered entities to comply with standard requirements. Additionally, documents considered to be Implementation Guidance have gone through a vetting process and are endorsed by the ERO Enterprise.”⁴

Implementation Guidance does not prescribe the only approach, but is intended to highlight one or more approaches that would be effective ways to be compliant with the standard. As Implementation Guidance is only meant to provide examples, entities may choose alternative approaches that better fit their situation.

The ERO Enterprise’s endorsement means that the ERO Enterprise recognizes the guidance as appropriate for deference during CMEP activities. Deference means that registered entities can rely on the guidance and be reasonably assured that compliance requirements will be met with the understanding that compliance determinations depend on facts, circumstances and system configurations which vary across the interconnections. The ERO Enterprise must respectfully consider applicable guidance in compliance determinations. In the instance that a registered entity, in good faith, relied on guidance, but was found non-compliant with the applicable requirements, the reliance on the guidance will be considered as a significant mitigating factor in any enforcement action by the ERO Enterprise.⁵ ERO Enterprise CMEP staff will be informed of Implementation Guidance and ERO Enterprise will direct CMEP staff to consider such guidance as a method to achieve compliance in any applicable compliance determinations. As a registered entity may use other approaches to comply with a standard, ERO Enterprise CMEP staff will be objective when assessing other compliance solutions.

This policy is not intended to apply to operating and reliability guidelines developed by the NERC technical committees (Operating Committee (OC)/Planning Committee (PC)/Critical Infrastructure Protection Committee (CIPC)) outside of Section 11 of the Standard Processes Manual (SPM), unless the operating or reliability guidelines provide examples of how to comply with a standard, in which case the examples must be submitted for endorsement if the technical committee would like them to receive deference.

Development

Implementation Guidance can be initiated and vetted in two different ways:

1. During standards development,⁶ the drafting team may identify example(s) of how to comply with a standard⁷
 - a. Example(s) posted for industry comment for vetting

⁴ Implementation Guidance does not conflict with the interpretation process, as the interpretation process is not intended to address compliance approaches. The Standard Processes Manual states that interpretation requests may be rejected where they request approval of a particular compliance approach.

⁵ In the event a registered entity believes that an ERO Enterprise CMEP staff did not appropriately consider Implementation Guidance and thus the registered entity should contact its Regional Entity for further discussion.

⁶ The standards development process includes coordination with the ERO Enterprise.

⁷ The drafting team can and should reach out to industry for assistance, as needed.

- b. Project Management and Oversight Subcommittee (PMOS)⁸ liaison and NERC standards developer determine whether to elevate to Implementation Guidance and request ERO Enterprise endorsement
2. After a standard is approved in a final ballot, registered entities may develop examples or approaches and vet them through a pre-qualified organization. Pre-qualified organizations are included in **Appendix B**.

After an example has been vetted⁹ through the standards development process or a pre-qualified organization the following general steps are envisioned:

1. Example(s) are submitted via email to NERC¹⁰ with acknowledgement of receipt to submitter
2. Example(s) and contact information for the submitter are posted on the NERC website as submitted within seven days of receipt for transparency
3. Example(s) are submitted to the ERO Enterprise for an endorsement within 45-90 days, unless a reason is provided otherwise. Endorsement is subject to technical soundness and compatibility with the standard language, and the ERO Enterprise leadership will ensure consensus among the Regional Entities. The ERO Enterprise will collaborate with submitter to resolve any questions.
4. Endorsed example(s) are moved from initial posting location to the one-stop shop on the NERC website; example(s) will be removed from the initial posting location on the NERC website if not endorsed
5. Once posted on the NERC website as an endorsed example, leadership at each of the Regional Entities will ensure that the example is given deference during CMEP activities.

When a new version of a standard is drafted, the standard drafting team will review existing Implementation Guidance for the previous version and contact the submitter to verify applicability to the new version.

Recommendations for Existing Documents

The compliance guidance policy is not intended to automatically modify the status of any existing document. The Team recommends a series of actions to reconcile Implementation Guidance with existing documents.

Transition of Existing Documents

Upon Board acceptance of the Compliance Guidance Policy, the Team recommends that the following documents be submitted for ERO Enterprise endorsement:

- Lessons Learned and FAQs developed through the CIP Version 5 transition advisory group
- *NATF CIP-014-1 Requirement R1 Guideline*
- *Determination and Application of Practical Relaying Loadability Ratings, Version 1.0, June 2008* for PRC-023

After Board acceptance of the Compliance Guidance Policy, the Team recommends that the Compliance and Certification Committee (CCC) as the lead, with support from the Standards Committee (SC), jointly review other existing documents to recommend which should transition and be submitted for ERO Enterprise-endorsement for Implementation Guidance. The CCC should submit its initial recommendations to NERC by the end of the first quarter of 2016.

⁸ The PMOS is a subcommittee of the Standards Committee that advises and supports standard drafting teams to achieve standard goals specified in the Reliability Standards Development Plan.

⁹ Example(s) must be vetted with registered entities that would be affected by the approach.

¹⁰ NERC will establish an email address for the submittal of vetted Implementation Guidance.

Section 11 of the Standard Processes Manual

The high-level processes proposed in this document were developed in the context of the Standard Processes Manual and do not overlap or supersede any of the processes therein, including the development of supporting documents under Section 11. Section 11 documents do not include or require the ERO Enterprise endorsement as described herein, and, therefore, do not carry the deference provided to Implementation Guidance. However, Section 11 remains a viable vehicle for posting supporting documents that do not require ERO endorsement for industry comment.

Under Section 11, the SC verifies that a supporting document was reviewed by stakeholders to verify the accuracy of the technical content, but it is not a technical committee. Therefore, the SC is not included on the pre-qualified list of organizations that may develop examples and submit them to the ERO Enterprise for endorsement. However, the Team believes that Section 11, with slight modification to the language, could serve as a vetting vehicle for Implementation Guidance, in addition to the vetting vehicles described herein, prior to submittal to the ERO for endorsement. Thus, the team recommends that the SC consider whether to modify Section 11 and any associated procedures so it can serve as an additional vetting option for submitting Implementation Guidance, and report to the Board on the SC's decision no later than the May 2016 Board and MRC meetings.

RSAWs and Measures

The Team suggests the CCC and SC, with ERO Enterprise CMEP staff, jointly review measures and RSAWs, specifically whether both are needed or could be condensed into a single document or location.

CMEP Practice Guides

Purpose

CMEP Practice Guides address how CMEP staff executes compliance monitoring and enforcement activities and are not compliance approaches to comply with standards.

Description

CMEP Practice Guides will provide:

- direction to ERO Enterprise CMEP staff on approaches to carry out compliance and enforcement activities, including discretion to be applied, auditing practices, risk assessment techniques, policies to be implemented, particular areas of focus for CMEP activities, and to foster consistency in compliance and enforcement;
- a uniform approach used by ERO Enterprise CMEP staff; and
- transparency to registered entities by being publicly posted.

In the event a CMEP Practice Guide will be used to inform ERO Enterprise staff on how to conduct compliance monitoring and enforcement activities as an interim solution until a standard could be revised, the ERO will hold policy discussions with industry prior to developing the CMEP Practice Guide.

Development

CMEP Practice Guides are developed solely by the ERO Enterprise to reflect the independent, objective professional judgment of ERO Enterprise CMEP staff, and, at times, may be initiated following policy discussions with industry stakeholders. Following development, they are posted for transparency on the NERC website.

The Team recommends that the ERO Enterprise develops a CMEP Practice Guide on providing deference to endorsed Implementation Guidance.

One-Stop Shop for All Standards Related Information

The Team recognized the importance of having all information related to a standard, including Implementation Guidance and CMEP Practice Guides, readily available to industry stakeholders and ERO Enterprise staff. Therefore, the Team is recommending housing all information related to a standard in one location on the NERC website. The Team recommends investigating the current 'Related Information' webpages as the location for this information. The Team suggests that NERC staff discuss the organization of these pages to ensure consistency and update the pages to include links to all related information. The pages should include relevant documents from the Compliance, Standards, Reliability Assessment and Performance Analysis, Critical Infrastructure, and Reliability Risk Management webpages. Further, NERC staff will regularly maintain these web pages to ensure that current documents are included in a reasonable timeframe.

Conclusion

The Team recommends the development of Implementation Guidance and CMEP Practice Guides, as described herein, to promote a common understanding amongst industry and ERO Enterprise CMEP staff of how compliance can be achieved and demonstrated. As designed, these tools fulfill the principles identified by the Team, and differentiate between guidance to industry and instruction to ERO Enterprise CMEP staff.

The Implementation Guidance will provide industry confidence in compliance approaches, as the examples are developed by registered entities and will receive deference during CMEP activities. Therefore, industry can rely upon these examples for compliance, provided they are appropriate for the entity's facts and circumstances and implemented in a quality manner.

The CMEP Practice Guides provide confidence by giving industry visibility into CMEP activities and building consistency across the ERO Enterprise in conducting CMEP activities. Additionally, where these are used to provide specific instruction on the use of discretion until a standard can be revised, the ERO Enterprise will consult with industry in policy discussions prior to their development.

Additionally, the Team recommends:

- The CCC will lead with SC support a joint review of existing documents to submit for ERO Enterprise endorsement;
- An SC review of Section 11 of the SPM to determine whether revisions should be considered;
- The CCC and SC, with ERO Enterprise CMEP staff, conduct a joint review of measures and RSAWs;
- Developing a CMEP Practice Guide on providing deference to endorsed Implementation Guidance; and
- Developing a “one-stop shop” on the NERC website.

The Team believes the proposed policy will bring multiple benefits to industry, including the development of Implementation Guidance driven by registered entities, a simple process for sharing endorsed implementation methods, collaboration with other registered entities and the ERO Enterprise, and transparency of Implementation Guidance and CMEP Practice Guides.

Appendix A - Members Representatives Committee Compliance Guidance Team Mandate, June 2015

Purpose

The purpose of this team is to present a proposal to the Members Representatives Committee (MRC) for the purpose, development, use, and maintenance of compliance guidance. When endorsed by the MRC, the proposal will be presented to the Board for approval and implementation.

Background

Since the inception of the ERO, compliance guidance has been a topic of many discussions. Transparency of guidance documents for compliance has gone from having little information released to industry to being transparent to ensure that compliance monitoring is “open-book.” Currently guidance may come from several sources, including “Guidelines and Technical Basis” sections that are part of Reliability Standards, the use of Reliability Standards Audit Worksheets (RSAWs), Lessons Learned and FAQs that support implementation, and through other NERC or industry-led outreach or materials. Other communications have also been tested, such as Bulletins, Compliance Application Notices (CANs) and Compliance Analysis Reports (CARs).

To improve the purpose, development, use and maintenance of compliance guidance and align industry and the ERO Enterprise, the NERC Board of Trustees (Board) sought input regarding the use and format of guidance for implementing standards through the April Policy Input Letter and a discussion led by a panel of industry and ERO Enterprise representatives at the May 2015 MRC meeting. These inputs as well as additional outreach that will be conducted, will inform this proposal. Industry was asked to consider the following principles when responding to the Policy Input Letter and during the discussion at the May meeting. These principles will also be used as a starting point for the team to discuss and build upon as appropriate.

- Compliance expectations should be transparent to industry.
- Guidance documents cannot expand upon the requirements of the Reliability Standard.
- Guidance documents issued by the ERO for auditors must reflect the independent, professional judgment of ERO Compliance and Enforcement staff.
- NERC and the Regional Entities must have the flexibility to apply professional judgement in making compliance and enforcement determinations. In applying professional judgement, NERC and the Regional Entities use professional standards (such as professional auditing standards).

Team Composition

The team is comprised of the following representatives who will conduct outreach to other industry, trade, regional and committee representatives:

ERO Enterprise Executives and Board Members*:

1. Ken Peterson, NERC Board Member and SOTC Chair
2. Douglas Jaeger, NERC Board Vice Chair
3. Mark Lauby, Senior Vice President and Chief Reliability Officer, NERC
4. Dan Skaar, President and CEO, MRO

*Additional support from Janice Case, NERC Board Member and BOTCC Chair

Leadership:

1. Sylvain Clermont, MRC Chair
2. Valerie Agnew, Sr. Director of Reliability Assurance, NERC
3. Kristin Iwanechko, MRC Secretary, NERC

Team Members:

1. Nabil Hitti, MRC Vice Chair
2. Tony Montoya, COO, WAPA
3. Tom Bowe, Executive Director of Reliability and Compliance, PJM
4. Nelson Peeler, VP Transmission System Operations, Duke (Sector 1, IOU)
5. Carol Chinn, Regulatory Compliance Officer, FMPA (Sector 2, State/Municipal Utility)
6. Jason Marshall, Vice President of Corporate and Regulatory Affairs, ACES (Sector 7, Electricity Marketer)
7. Brian Murphy, Standards Committee (SC) Chair
8. Patti Metro, Compliance and Certification Committee (CCC) Chair
9. Steven Noess, Director of Compliance Assurance, NERC
10. Sonia Mendonca, Deputy General Counsel, Vice President of Enforcement, NERC

Deliverables

The team will provide a progress report to the MRC at its August 12, 2015 MRC meeting. The team will present a final proposal to the MRC at the November 4, 2015 meeting and, if endorsed, will present it to the NERC Board at its meeting on November 5, 2015. The final proposal will make recommendations on the purpose, development, use, and maintenance of compliance guidance in respect of the principles. Below is a draft timeline.

August

By August, the team will have developed the basis for the proposal. The team will present a status report at the August MRC meeting.

May 29	Establish team
June 1-June 10	Develop strawman for team meeting
June 12	First team meeting – discuss strawman and basis for proposal

June 15-30	Begin draft proposal
July 8-9	Team meeting to discuss and refine draft proposal
July 11-15	NERC staff finalizes documents for August MRC meeting
July 16	Policy Input Letter issued
August 12	August MRC meeting

November

By November, the team will have received industry comments and will present the final recommendations to the MRC and the NERC Board for endorsement.

August 17-19	Team meeting to consider MRC and Board input
August 20	Post for 21-day comment period (ends September 10) and conduct outreach
Week of September 14	Team meeting to consider comments and modify proposal
September 16-23	Conduct additional outreach as needed
September 23-25	Team finalizes proposal (no meeting; a call if necessary)
September 28- October 5	NERC staff finalizes documents for November MRC/Board meeting (no meeting; a call if necessary)
November 4	November MRC meeting
November 5	November Board meeting