

via email to RDAComments@nerc.net

Comments of American Public Power Association and Transmission Access Policy Study Group on March 2, 2015 Posting of Draft Revised Delegation Agreement

APPA and TAPS appreciate the opportunity to comment on the draft revised delegation agreement. As described below, we are concerned that the draft revised delegation agreement enhances the role of the Regional Entities at the expense of NERC, thereby ceding NERC authority contrary to the contemplation of Section 215. These changes raise questions as to whether NERC will be in a position to ensure that its statutory and regulatory obligations as the FERC-certified Electric Reliability Organization are carried out by Regional Entities, much less in the consistent manner that the FERC expects. Specific examples of such degradation of NERC authority include:

- Increased Regional flexibility to amend bylaws: Pursuant to new Section 2(i), each RE would be free to amend its bylaws so long as it adheres to the statutory criteria listed in Exhibit B. Nor is there express provision for NERC BOT review and approval of revisions to the RE bylaws.
- Reduction in NERC's capability to oversee and drive consistency in enforcement: While some revisions are driven by the change from reported violations and penalties to reliance, to a significant degree, on compliance exceptions and FFTs, we are concerned that NERC is forfeiting the express rights it now has to review and reject an RE disposition of a confirmed violation based on specified criteria (*see* current Section 6(e)). Proposed Section 6(d) provides for submission of dispositions to NERC "for review," and for NERC, in collaboration with the REs, to develop and implement policies and procedures for the review, and where appropriate, approval of dispositions. This new language not only omits NERC's right to reject an RE submission if it fails to meet specified criteria (which currently include consistency), but suggests that NERC approval may not even be "appropriate" in all cases.
- Dilution of NERC authority to ensure consistent and effective implementation of statutory authority: The proposed delegation agreement would eliminate a number of provisions that empower NERC to review Regional Entity programs and activities for their consistency and sufficiency to carry out the ERO's functions. For example, current Section 6(j) requires NERC to review each Region's compliance and enforcement program at least once every five years to ensure that all applicable requirements were met both as to the program and in practice, and "the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties for violations of

Reliability Standards constituting comparable levels of threat to reliability of the Bulk-Power System.” Section 8(f)’s existing provision for NERC audits of REs has been removed in favor of supplementing Section 8(e)’s provision for collaborative reviews. Section 12 of the existing delegation agreement allows renewal only after NERC conducts an audit of the RE to ensure the RE continues to meet all applicable and regulatory requirements necessary to maintain the delegation.; the proposed revised delegation agreement makes the delegation essentially perpetual, automatically renewing every five years unless one party provides a one-year notice of termination.

- Loss of clarity on NERC’s ultimate authority as ERO: In numerous instances where the existing delegation agreement empowers NERC to develop procedures and requirements to be used in performing delegated activities, the proposed delegation agreement provides for collaborations with the REs. For example, in Section 7(c), the proposed language would replace NERC development of data gathering requirements for reliability assessments and performance analyses, with revised language that leaves data gathering quality requirements to policies and procedures to be developed collaboratively. *See also, e.g.,* Section 6(c) (CMEP procedures and guidance); Section 6(d) (policies and procedures for review of dispositions); Section 7(d) (event analysis); and Section 7(f) (situational awareness). We recognize that collaboration can provide significant benefits, including serving as a practical means to achieve consistency and enhance performance. We note as well that NERC retains its Section 8(c) and (d) authority to issue directives, guidance, and directions to the REs. We are nonetheless concerned that the revised language creates doubts as to whether ultimate authority still resides with NERC on significant matters.

APPA and TAPS therefore encourage reconsideration of these proposed changes to ensure that the revised delegation agreement does not dilute or hamstring the ability of the ERO to carry out its statutory functions in an effective and consistent manner.