

via e-mail to ROPcomments@nerc.net

**COMMENTS OF TRANSMISSION ACCESS POLICY STUDY GROUP ON APRIL 6,
2015 POSTING OF PROPOSED REVISIONS TO NERC RULES OF PROCEDURE –
RISK-BASED CMEP COMPLIANCE FILING**

TAPS appreciates the opportunity to comment on NERC's proposed revisions to its Rules of Procedure to comply with FERC's February 19, 2015 order on NERC's RAI filing. In addition to requiring that RAI be incorporated into the ROP, FERC directed NERC to, among others, (1) make compliance exceptions public in the same manner as it does FFTs; and (2) conduct a formal review (but not necessarily an ICE) of an entity's internal controls before permitting the entity to self-log instances of non-compliance.

We have several concerns about the proposed revisions. Specifically:

1. The timing of when risk assessments of Registered Entities will be performed is not addressed. The timing should enable Registered Entities to respond to a Regional Entity's assessment, as envisioned in the IRA guidance document, and have the results of that interaction factor into the scope of an audit. Further, the timing of an ICE is also important. As became apparent in the small entity exercise, it may not make sense for small entities to prepare for an ICE unless the results of their IRA highlight specific areas where an ICE might reduce the scope of their compliance interactions. Therefore, it is important (a) that there be sufficient time between the completion of an IRA and, for example, an audit, for a Registered Entity to evaluate its situation and request an ICE if appropriate, and (b) where a Registered Entity determines that it *does* make sense for it to request an ICE, for it to have the opportunity to request *and secure* an ICE evaluation outside of the audit-driven time schedule. If ICE evaluations are available only within limited windows connected to audits, smaller entities that have infrequent, if any, "audits" will be excluded. And if a Regional Entity can refuse to perform an ICE, or postpone the ICE indefinitely, on the basis that the small entity's relatively limited compliance scoping is a lower priority than that of larger entities, the ICE will essentially be unavailable to small entities, with the discriminatory and counterproductive consequence that small entities will be subject to unnecessary compliance monitoring *because* of their comparatively lower risk. Accordingly, we request that the following language be added to the CMEP: "A Registered Entity may at any time request that the Compliance Enforcement Authority perform an Internal Control Evaluation. The Compliance Enforcement Authority shall perform the requested ICE within a reasonable time, expected in most cases not to exceed 120 days."
2. The end of the third paragraph in CMEP Section 3.0 states that "[i]f the Preliminary Screen results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists and the Compliance Enforcement Authority will proceed in accordance with Section 5.0, Enforcement Actions." Requiring the Compliance Enforcement Authority to conduct a Preliminary Screen and proceed to an enforcement action is at odds with the enforcement discretion inherent in RAI and, more

specifically, with Section 4.0's provision for Compliance Exceptions. It is also inconsistent with CMEP Section 3.8, which states that if the Preliminary Screen results in a Possible Violation, the CEA proceeds in accordance with Section 5.0 "*unless an alternative enforcement process is used, in accordance with Section 3A.0.*" The same language should be added to Section 3.0 to eliminate the inconsistency and reflect NERC's enforcement discretion.

3. P 42 of FERC's February 19 Order states that NERC's compliance filing must address "a methodology for assessing an entity's internal controls," as well as "the circumstances under which an alternate methodology will be used in place of an ICE." Given the significant challenges with regard to applying ICE to small entities (as revealed in the small entity exercise in which TAPS members engaged with NERC and its REs), it's very important to develop an alternate methodology to facilitate small entity participation in self-logging (though the methodology may not have to be included in the CMEP). As NERC filed a self-logging procedure at FERC on May 20, TAPS will review the proposed procedure and provide comments in that forum.
4. The February 19 Order, in response to urging by TAPS and others, requires NERC to make information regarding compliance exceptions available to the public. But proposed CMEP Section 3.5A states that a Registered Entity's self-log will be made available upon request to NERC and the Applicable Governmental Authorities. If the log is the record of the logged compliance exceptions—and it appears to be—those compliance exceptions must be made available to the public, not just to NERC and Applicable Governmental Authorities. Although NERC is currently posting compliance exceptions on its website, additional changes to the ROP may be appropriate in order to make the transparency requirement clear, or at least to clarify that NERC may not change the requirement without FERC approval. Providing this clarification in the ROP will not impinge on NERC's flexibility, since the requirement is in the FERC Order and thus cannot be changed without FERC approval.