

## NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

Princeton Forrestal Village, 116-390 Village Boulevard, Princeton, New Jersey 08540-5731

### Appellate Process–Control Area Readiness Audit Program Comment Form

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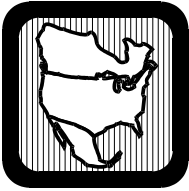
Comments:

The ISO-RTO Council Standards Review Committee ("IRC -SRC") provides the following comments to the NERC Appellate Process - Compliance Program (the "Compliance Audit Process").

SRC's comments are premised on the representation of NERC that: a) the Compliance Audit Process and the NERC Appellate Process Control Area Readiness Audit Program (the "Readiness Audit Process") collectively represent NERC's entire expected and intended appeals procedures; and b) that the Compliance Audit Process and the Readiness Audit Process are not expected or intended to supplement or supplant the NERC Regional Reliability Councils' ("RRC") authority or appellate processes.

1. There should be one appeal process for both the Compliance Audit Process and the Readiness Audit Process.

Submit comments to: [appealscomments@nerc.com](mailto:appealscomments@nerc.com) by COB **November 15, 2004**



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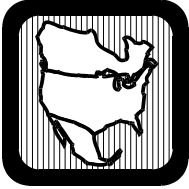
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2. Language is needed confirming that only disputes arising under formal NERC compliance and readiness audits are covered, and that all other matters not arising from NERC compliance and readiness audits are within the exclusive authority and control of the RRCs.
3. The NERC audit team should provide the audited entity with prior notice of a “proposed violation,” prior to their becoming “findings.”
4. Audit reports should remain “proposed” or “preliminary” (i.e. not “final,” and therefore confidential and not subject to publication) during the pendency of the appeals process. The report would become “final” when: a) a disputed point(s) is decided in the audited entity’s favor within the appeals process; b) the audited entity declines to pursue or continue its appeal; or c) the appeals process is pursued to conclusion.
5. Initial findings that are resolved during the appeals process in a manner that doesn't result in a violation should not be published unless agreed by both parties.
6. A preapproved list of mediators that is acceptable to the Region(s) should be established for the neutral mediation process. This list will be based on the issue that may come into question and match the mediator to the issue based on their qualifications.

SRC also provides the following appeal process concepts for consideration and/or adoption by NERC:

1. If the audit committee and the audited entity can not resolve any alleged violation, the audit committee would include the alleged violation in a “proposed report,” which the audit committee will forward to the NERC Vice President of Compliance. The audited entity would at the same time provide their position in writing to the NERC Vice President of Compliance.
2. The NERC Vice President of Compliance may adopt the audit team or audited entity’s position, or mediate a settlement. If he/she adopts the audited entity's position or reaches a mediated settlement, the matter is considered resolved, and the report becomes “final.” If the NERC Vice President of Compliance adopts the audit committee's position, the dispute is considered ongoing, and the report remains “proposed.”
3. The NERC Vice President of Compliance would then forward any “proposed” reports containing disputed violations to the NERC Compliance and Certification Committee (the “CCC”) for mediation. The NERC Vice President of Compliance would present the position of a

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violation to the CCC. The audited entity would provide a representative who would present its position of “no violation” to the CCC.

4. If no settlement is reached at the CCC, the matter would, at the audited entity’s option, be subject either to submission to: a) judicial or regulatory review by FERC or an appropriate Canadian authority, or b) binding arbitration by a knowledgeable independent third party, agreeable to the audited entity and NERC. The NERC Board of Trustees should not be involved in any appeal or dispute.