

April 30, 2009

MRO Stakeholder Comments Proposed Procedures to Request Technical Feasibility Exceptions to NERC CIP Standards

The MRO has developed a process that clearly defines the various roles of those involved in developing comments. The MRO Standards Committee has established a subcommittee, the NERC Standards Review Subcommittee (“NSRS”), and tasked it with the role of carrying out this process for all NERC SARs, Standards, and related policies that are posted for public comment.

The MRO NSRS members:

Carol Gerou, Minnesota Power, Chair

Neal Balu, Wisconsin Public Service

Terry Bilke, Midwest ISO

Joe DePoorter, Madison Gas and Electric

Ken Goldsmith, Alliant West

Jim Haigh, Western Area Power Administration

Terry Harbour, MidAmerican Energy Company

Joseph Knight, Great River Energy

Scott Nickels, Rochester Public Utilities

Dave Rudolph, Basin Electric Power Cooperative

Eric Ruskamp, Lincoln Electric Services

Pam Sordet, Xcel Energy

Michael Brytowski, MRO Staff

MRO NSRS respectfully submits the following comments on the NERC Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards:

1. The MRO NSRS believes that with the extensive comments to the Rules of Procedure for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards (TFE), this document should be presented to the industry for a second round of review and comments.
2. The current CIP standards do not require a submitted and pre-approved TFE. The MRO NSRS suggests modifying the CIP standards to include the TFE procedure.
3. The MRO NSRS believes the default disapproval after 60 days should be removed. The MRO NSRS believes that NERC’s work load could be such that TFEs may unavoidably be denied by default. The MRO NSRS suggests that there is an automatic extension of 60 days.



4. Section 5.2.2. –The MRO NSRS believes this is essentially performing a risk assessment. If NERC does a wide area analysis and it shows there is no impact, doesn't this justify excluding the asset from the Critical Cyber asset list?
5. Section 5.2.5 & 5.2.6 – What about the default disapproval if NERC does not respond within 60 days of the TFE request? What is the Effective Date to implement a mitigation plan? Note that in comment #2, the MRO NSRS has asked the drafting team to remove the default disapproval after 60 days.
6. Section 5.3. --Need to include a date from when TFE is requested, but may not contain all the required information. Is this covered by the TFE being disapproved?
7. There should be some differentiation between an exception for Technical Feasibility and one for "Technical Impossibility." For example, the CIP standards require that antivirus software be deployed on all components; however, antivirus software is not appropriate for network layer 2 and layer 3 devices (switches and routers) and most UNIX operating systems do not have any antivirus software options available. In these types of situations, it does not make sense to require that a Responsible Entity submit a TFE for exceptions to antivirus software on a class of network components or class of UNIX servers for which there is not a feasible or possible solution available to the industry. Suggest that NERC develop a list of universal issues for which the Responsible Entity might reference instead of requiring multiple Responsible Entities to submit numerous TFEs for the same component limitations.
8. Section 1.3 limits the Scope of the TFE to the Applicable Requirements are R2.4, R2.6, R3.1 and R3.2 of CIP-005-1, and R2.3, R4, R5.3, R6 and R6.3 of CIP-007-1. The scope should apply to CIP-002 through CIP-009. Limiting the scope pre-supposes that every instance where technical infeasibility may arise has been identified which certainly is not possible. Please modify the scope as described above.
9. Many definitions in the TFE Rules of Procedures (ROP) changes are already contained in the NERC Glossary of Terms. Redefining them here is problematic. In some cases, the definitions differ from the Glossary of Terms. Even when there are no differences, the inclusion of a subset of terms could imply that the remaining NERC Glossary of Terms doesn't apply. Additionally, if changes are made to these definitions that are also contained in the Glossary of Terms, then changes must also be made to the Rules of Procedure. More specifically, Bulk Electric System defined in section 2.7 deviates from the Glossary of Terms

in that Regional Reliability Organization is replaced with Regional Entity. While the change is appropriate, solution is to submit a change to the Glossary of Terms rather than redefining it in the ROP. The definition of Cyber Assets in section 2.22 is already included in the NERC Glossary of Terms and should be removed here.

10. In section 2.19, the definition of Critical Infrastructure includes the term economic security. This is not a well defined term in the electric industry. Please explain the meaning.
11. Why is Responsible Entity in section 2.40 defined? Why not use the well defined term Registered Entity? Registered Entity is a well understood term and is the predominant term used in the remainder of the Rules of Procedure.
12. Section 3.2 of Appendix 4D states that the TFE “requires the Responsible Entity to implement and maintain an alternate approach to achieving compliance with the Applicable Requirement, though the use of compensating measures and/or mitigating measures.” While not able to strictly comply with the Applicable Requirement, if the Responsible Entity is able to fully compensate for and mitigate the risk posed by its inability to strictly comply, a remediation plan to bring it into Strict Compliance should not be necessary. The cost of implementing a remediation plan in this instance results in no further reduction of risk and thus offers no discernable benefit to the reliability of the Bulk Electric System.
13. Similarly, Section 3.3 of Appendix 4D states that the TFE will be approved only for a limited duration, until a stated Expiration Date. If the Responsible Entity can demonstrate that the compensating and mitigating measures are effective in eliminating the risk caused by being unable to strictly comply with the Applicable Requirement, further remediation by a stated Expiration Date is not beneficial or necessary.
14. Section 3.3 conflicts with Section 3.1 subsection (v). Section 3.1 subsection (v) specifies one reason for requesting a TFE is that the costs of Strict Compliance far exceed the benefits realized. An example that is given is the case in which equipment would have to be replaced well ahead of the end of its useful life. Section 3.3 specifies that “under limited, justified circumstances, a TFE Request may be approved without a specified Expiration Date”. Equipment not anywhere near the end of its useful life would be a justifiable reason not to specify an Expiration Date. Much utility equipment (relays for example) have a long useful life. Thus, we do not think that these circumstances will be limited but rather one of the predominant reasons for requesting a TFE. We request that the last sentence in section 3.3 be modified to: “Under justified circumstances (Section 3.1 subsection (v) may be one example), a TFE Request may be approved without a specified Expiration Date, subject to periodic review to verify continuing justification for the TFE.”

15. In section 4.3.1, subsection 12, the Senior Manager must sign and date that he has read the TFE request and understands the request. The MRO NSRS believes that NERC's priority should be with the merits of the TFE request. Senior Manager should be changed to 'authorized representative'.
16. Section 6.4 is similar to section 4.3.1 subsection 12 in that the Senior Manager must sign and date a statement that he has read and understood the contents of the report. Senior Manager should be changed to 'authorized representative'. The MRO NSRS believes that NERC's priority should be with the merits of the TFE request
17. Section 8.2 of Appendix 4D requires the Compliance Enforcement Authority to attempt to advance the Compliance Audit from subsequent years for Responsible Entities with an approved TFE. This is unnecessary, inefficient and could be viewed as an attempt to discourage Responsibilities Entities from seeking TFEs to avoid more frequent compliance audits. The Compliance Monitoring Enforcement Programs (CMEP) of all the Regional Entities and NERC already have the appropriate monitoring processes in place to review progress of the TFE without advancing the compliance audit. For example, a spot check could be conducted specifically associated with the TFE. We request that you modify this section to remove any requirement to move or even attempt to move compliance audits and rather utilize other processes within the CMEPs to monitor the TFEs.
18. Section 11.3 attempts to limit NERC's responsibility to approve a TFE if they can't access the appropriate technical information due to legal restrictions on the communication of information. This is reasonable only to the extent that NERC resources continue to maintain their credentials to remain Eligible Reviewers. Failure by NERC to have Eligible Reviewers that can view the sensitive information must not be a reason for failure to review the information. This section should be modified to reflect that a time extension shall be granted if NERC is unable to review information for lack of Eligible Reviewers until such a time that they have regained Eligible Reviewer credentials.
19. Before NERC implements these TFE Rules of Procedure changes, the MRO NSRS would like to see a plan with the Regional Entities to handle monitoring TFEs for Responsible Entities in multiple regions. This action would improve compliance of Responsible Entities in multiple Regional Entities. The MRO NSRS would like NERC and the Regional Entities to avoid compliance issues by introducing changes without due consideration for Responsible Entities in multiple regions.
20. The MRO NSRS respectfully requests that the "wide-area analysis" be defined and what type of performance criteria will be applied for those analyses suggested throughout the TFE Rules of Procedure. (For example, an analysis is suggested in sections 5.2.2 and 11.1.vii)