TAPS Comments
Proposed Compliance Monitoring and
Enforcement Program Revisions
to the Rules of Procedure

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via e-mail to ROPcomments@nerc.net

COMMENTS OF TRANSMISSION ACCESS POLICY STUDY GROUP ON POSTING OF PROPOSED CHANGES TO NERC RULES OF PROCEDURE DATED N0VEMBER 2, 2020

TAPS appreciates the opportunity to comment on NERC's proposed changes to the Compliance Monitoring and Enforcement Program ("CMEP") portions of the NERC Rules of Procedure ("ROP"), dated November 2, 2020.[1] Many of the proposed revisions will enhance efficiency and contribute to a risk-based approach to compliance and enforcement. As described below, however, TAPS is concerned that some changes, as proposed, could harm transparency and oversight, or unduly burden registered entities, particularly small entities such as TAPS members.

I. CONSISTENCY

A. Elimination of Regional Implementation Plans and Regional CMEPs

TAPS supports NERC's proposal to eliminate separate Regional CMEPs and Regional CMEP Implementation Plans, and instead use the uniform CMEP and ERO Implementation Plan continent-wide. As the electric reliability organization ("ERO") matures, it is appropriate to phase out unnecessary differences among Regional Entities. NERC should, however, clarify how regional risk variances will be accounted for in an ERO CMEP Implementation Plan.

B. Oversight of Regional Entity Implementation of ERO CMEP

While a single, uniform ERO CMEP is an important step towards achieving NERC's goal of ensuring "consistency and fairness of the Regional Entity's execution of the CMEP,"[2] it is not, on its own, sufficient; ongoing oversight is critical to ensuring that the CMEP is *implemented* consistently, including with respect to determinations of noncompliance and Penalty assessments. NERC's intent with respect to oversight of Regional Entities is not clear: for example, the Summary of Proposed Changes[3] suggests that a key component of NERC's proposed "risk-based oversight" program is an audit of each Regional Entity to be conducted at least every five years, and states that "[w]ith inclusion of these provisions in Section 400, NERC proposes elimination of Appendix 4A and its procedure for NERC's Audit of Regional Entity

[1] NERC Rules of Procedure, Sections 400 and 1500 (proposed Nov. 2, 2020), https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Redline_Sections 400 and 1500_CMEP.pdf ("Proposed Rules"), and NERC Rules of Procedure, Compliance Monitoring and Enforcement Program, Appendix 4C (proposed Nov. 2, 2020), https://www nerc.com/FilingsOrders/us/RuleOfProcedureDL/Redline_Appendix 4C_CMEP.pdf ("Proposed Appendix 4C").

[2] Proposed Rule 402.1.

[3] NERC, Proposed Revisions to NERC Rules of Procedure for the Compliance Monitoring and Enforcement Program, https://www nerc.com/FilingsOrders/us/RuleOfProcedureDL/Summary%20of%20CMEP%20ROP%20Changes.pdf (2020) (summary of CMEP ROP changes) ("Summary").

Compliance Programs." But the five-year audit requirement is already part of section 400,[4] and NERC does not propose to revise it significantly; it is thus unclear how its "inclusion" in section 400 could justify the elimination of Appendix 4A. Nor do NERC's other proposed changes to section 400 regarding its oversight of the Regional Entities add significant detail or substance. To allow stakeholders to comment meaningfully on its proposal, NERC should clarify how it plans to ensure that Regional Entities implement the uniform CMEP consistently, including with respect to determinations of noncompliance and assessments of Penalties.

II. COMPLIANCE ENGAGEMENTS

A. Audits

A. Audit frequency and format

NERC proposes to give Regional Entities discretion over when to conduct audits,[5] as well as whether to have an on-site component to an audit.[6] TAPS supports this proposal; increased flexibility will support the ERO's risk-based compliance monitoring approach.

B. Audit schedule

TAPS is concerned that NERC's proposal to eliminate the posting of an annual audit schedule[7] will allow registered entities too little time to prepare for audits. NERC states in the Summary that registered entities will have adequate information about timing thanks to (a) "indications" of frequency in the entity's Compliance Oversight Plan ("COP") and (b) the ninety-day audit notice.[8] But the COP, as currently implemented, does not provide meaningful notice: for example, some TAPS members have received their COPs at the same time as their audit notifications.

And the ninety-day audit notice is insufficient, without an additional advance notice such as is currently provided by the annual audit schedule. The ninety-day notice starts the clock on providing specific evidence to the Compliance Enforcement Authority ("CEA"); it is not adequate notice of the existence and general scope of an audit. In fact, because the deadline to submit evidence is well before the audit start date, NERC's proposal would effectively provide significantly *less* than ninety days. Regional Entities vary in terms of when they require evidence—some give registered entities sixty days to respond following the audit notification, but others allow only thirty days. While TAPS members strive to be audit-ready at all times, the process of converting internal records into an organized package responsive to the Regional Entity's questions is time- and labor-intensive. Allowing registered entities adequate time to

[4] Current Rule 402.1.3.

[5] Proposed Rule 403.10; Summary at 2.

[6] Proposed Rule 403.10; App. 4C, proposed § 4.1; Summary at 2.

[7] NERC, *Rules of Procedure* (effective Jan. 25, 2019), Compliance Enforcement Authority Annual Audit Plan and Schedule, Appendix 4C to the Rules of Procedure, Effective: June 8, 2018, § 3.1.2, https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/NERC_ROP_Effective_20190125.pdf ("App. 4C, current") (proposed for deletion).

[8] Summary at 2.

compile their submittals, and adequate advance warning to ensure that the appropriate personnel are available to do so, benefits the CEA as well as the registered entity, since doing so results in a better-organized submittal.

Registered Entities, especially small entities with limited compliance staff, need advance warning so that they can ensure that key personnel are available to handle compliance engagements. TAPS agrees with the American Public Power Association and the Large Public Power Council that at least nine months' notice is needed before the start of a Compliance Audit.

Neither the current ROP nor the proposed revisions address either the COP or the Required Date for audit evidence submission. If the audit schedule is to be eliminated, NERC must clarify in the ROP both the timing and content of the COP, as well as the Required Date for submission of evidence following an audit notification. An accurate COP, including the customized monitoring scope and schedule, delivered to all entities on a set schedule, and at least nine months in advance of an audit, would likely provide adequate notice. Absent these or other comparable changes to the proposal, TAPS opposes the elimination of the posting of an annual audit schedule.

C. Audit Period and Scope

NERC proposes to delete the current, overly burdensome requirement that a registered entity be able to demonstrate compliance for the entire audit period, instead proposing revisions[9] that seem, with one exception, to be consistent with the SER Phase 2 recommendations[10] regarding evidence retention reform. TAPS generally supports the proposal, but additional clarity is needed with respect to the "evidence of previous testing intervals" that can be requested for activities performed on a periodic basis of more than three years. The proposed text could be read as allowing an auditor to request evidence for *all* prior testing intervals—a clearly excessive result. The ability to request evidence of prior testing intervals should be limited to the standard's evidence retention period. Further granularity could be provided by a registered entity's COP; if a registered entity has a good record with respect to a requirement, the CEA could permit it to retain evidence of just the most recent interval, even if the standard's evidence retention period would cover more intervals.

NERC also proposes to change the language regarding beginning and end dates of the audit period. The proposed changes would give the Regional Entity more discretion with respect to the beginning date of the audit period, stating only that "[t]he beginning date of the audit period for any given Reliability Standard Requirement may account for factors such as an intervening

[9] App. 4C, proposed § 4.1.3.2.

[10] *Standard Efficiency Review (SER) Phase 2 Evidence Retention Team's Recommended Evidence Retention Schemes, Evidence and Data Retention White Paper: Analysis and Recommendations* (2019), https://www.nerc.com/pa/Stand/Standards%20Efficiency%20Review%20DL/SER_Evidence_Retention_White_Paper_02062020.pdf; NERC Standards Comm., Agenda Item 9, *SER Evidence Retention Recommendations* (2019), https://www.nerc.com/pa/Stand/Standards%20Efficiency%20Review%20DL/SER_Evidence_Retention_Recommendations_02062020.pdf (endorsed by Standards Committee Dec. 18, 2019).

compliance monitoring process."[11] TAPS supports this proposed increased flexibility, which is consistent with a risk-based compliance monitoring approach.

TAPS requests, however, that NERC clarify the impact of the beginning and end dates of the audit period, particularly in the context of the proposed limitations on what evidence an auditor can request. For example, if a requirement specifying an activity to be performed on a periodic basis of less than three years has a stated evidence retention period of three years, and the beginning date of the audit period with respect to that requirement is five years before the audit period end date, the proposed text suggests that the auditor could only request evidence for the past three years—an approach that TAPS supports.

If, on the other hand, the beginning date of the audit period for the hypothetical requirement just described were just *two* years prior to the audit period end date, would an auditor be limited to requesting data for only the two years covered by the audit period? Or would the auditor be permitted to request data from before the start date of the audit period, for a total of three years? If the latter interpretation is correct, what purpose is served by the audit period beginning and ending dates? Do they merely indicate the time period on which auditors will focus their attention? NERC should explain its intent and clarify the proposed text.

B. Self-Certifications

NERC's proposal to eliminate the posting of a Self-Certification schedule,[12] instead "initiat[ing] Self-Certifications as needed based on emerging identified risks,"[13] raises the same concerns as the proposed elimination of the annual audit schedule. NERC proposes that the CEA would provide the registered entity with at least thirty days' notice of a Self-Certification.[14] But from the registered entity perspective, a Self-Certification involves essentially the same compliance-confirming activity as an audit. Registered entities—particularly small entities—thus need more than thirty days to respond. As suggested above with respect to audits, regularly issued, accurate COPs could take the place of the Self-Certification schedule as the vehicle for providing registered entities with the necessary advance notice. But as currently proposed, the elimination of the Self-Certification schedule would leave registered entities with insufficient time to prepare and submit Self-Certifications; plainly, that is not acceptable. TAPS thus opposes the change.

III. NONCOMPLIANCE

A. Compliance Exceptions

A. NERC/FERC Review

With respect to NERC's proposal to "refine the Compliance Exception Program by removing the requirement for the CEA to submit Compliance Exceptions to NERC for a 60-day review by NERC and FERC,"[15] TAPS notes that it is crucial that NERC continue to post Compliance

[11] *Id*.

[12] App. 4C, proposed § 4.2.1.

[13] Summary at 3.

[14] App. 4C, proposed § 4.2.1.

[15] Summary at 3.

Exception information on its website, as required by FERC.[16] As FERC has recognized,[17] Compliance Exception information is valuable to stakeholders as a learning tool to help them improve their own programs, as well as helping to ensure that similar noncompliance is treated consistently. NERC, appropriately, does not appear to contemplate any alteration to that obligation.[18]

B. Compliance History

NERC states that some of its proposed changes are intended to "clarify" the treatment of Compliance Exceptions in a registered entity's compliance history.[19] Currently, the CMEP states that although "Compliance Exceptions are not included in a Registered Entity's compliance history for penalty purposes,"[20] the CEA must "assess subsequent noncompliance to determine whether a Registered Entity should continue to qualify for Compliance Exception treatment."[21]

NERC proposes to refer to "overall compliance history," in place of the current "subsequent noncompliance."[22] NERC explains that "[t]he revision would simplify the CEA's consideration of compliance history by looking at the registered entity's overall compliance history to determine whether the registered entity should continue to qualify for Compliance Exception treatment—instead of having to consider each prior Compliance Exception individually."[23]

The context of this language is important: in the RAI proceeding at FERC, NERC proposed that Compliance Exceptions not be considered part of a registered entity's compliance history for penalty purposes.[24] FERC accepted that proposal, with one addendum relevant here: it required that Regional Entities "assess[] any subsequent noncompliance of the same or closely-related Standards and Requirements to determine whether the registered entity should continue to qualify for compliance exception treatment regarding the subject of the repeat noncompliance."[25]

While the current ROP's choice of words does not clearly convey FERC's directive, NERC's proposal to instead look at a registered entity's *overall* compliance history, rather than its compliance history with respect to the same or closely related requirements, would represent a substantive change, not a "clarif[ication]." A more useful clarification would use FERC's

[16] *N. Am. Elec. Reliability Corp.*, 161 FERC ¶ 61,187, PP 28, 31-32 (2017) ("2017 Order"); *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,108, P 36 (2015) ("RAI Order").

[17] *See*, *e.g.* note 35 below.

[18] Proposed Rule 401.11.

[19] Summary at 3.

[20] App. 4C, current § 3A.1.

[21] *Id*.

[22] App. 4C, proposed § 4A.1.

[23] Summary at 3.

[24] RAI Order P 44; Informational Filing of the North American Electric Reliability Corporation at 44, 62 n.54, *N. Am. Elec. Reliability Corp.*, No. RR15-2-000 (Nov. 3, 2014), eLibrary No. 20141103-5199 ("RAI Petition").

[25] RAI Order P 45.

language to avoid any confusion. Based on the experience of TAPS members, NERC should also (a) provide additional guidance to Regional Entity staff with respect to the relative weight to be given to recent versus several-years-old "repeat noncompliance"; and (b) clarify that under most circumstances, regular self-reporting of minimal risk issues is more likely to be indicative of strong internal controls that catch and fix issues before the risk increases, than of a flawed compliance program.

B. Self-Logging

In place of the current rebuttable presumption that self-logged items will be resolved as Compliance Exceptions,[26] NERC proposes to exempt all self-logged noncompliance from the Preliminary Screen[27] and "subsequent reporting and disposition processes,"[28] and provide that "[a] potential noncompliance logged in this manner [would be] reviewed by the CEA and [would] not require further action."[29] Consistent with the current requirement, self-logs would be available for review by NERC or FERC upon request.[30]

The current options for "enforcement discretion" are the Compliance Exception and Find, Fix, Track and Report ("FFT") tracks;[31] every noncompliance has to go through some process. NERC does not propose to change that approach with respect to noncompliance discovered through any means other than self-logging.[32] However, NERC proposes to add a third option for enforcement discretion: self-logged potential noncompliance that is not acted on. Under NERC's proposal, self-logs would be unique in allowing actual noncompliance (i.e., potential noncompliance that would not have been dismissed based on a Preliminary Screen or Assessment of Potential Noncompliance, if subjected to that process) to be passed over without even a Compliance Exception.[33]

While TAPS supports streamlining compliance and enforcement, such efficiencies must not come at the expense of the "transparency in the outcome of compliance and enforcement matters relating to noncompliance with Reliability Standards" that FERC has consistently required.[34] NERC does not propose to post any information about self-logged noncompliance on which the Regional Entity takes no action, thus depriving industry of learning opportunities, as well as of the ability to assess whether similar instances of noncompliance are being treated consistently

[26] App. 4C, current § 3.5A.

[27] App. 4C, proposed § 4.5A.

[28] Summary at 3.

[29] App. 4C, proposed § 4.5A.

[30] Summary at 3.

[31] App. 4C, current § 3A.0.

[32] App. 4C, proposed § 4A.0.

[33] While it would be impossible, absent the Preliminary Screen and Assessment of Potential Noncompliance, to tell whether any *particular* self-logged potential noncompliance was an actual noncompliance, NERC's proposal to pass over potential noncompliance without performing the initial screens ensures that *some* actual noncompliance will be disregarded.

[34] 2017 Order P 32; *see also* RAI Order P 38.

across Regions, and from one registered entity to another.[35] The risk of inconsistency is compounded by the fact that NERC proposes to provide no guidance to Regional Entities on which self-logged noncompliance would warrant further action. In the absence of such guidance, consistent implementation would be all but impossible.[36]

Two further problems are introduced by NERC's apparent intention not to keep track of un-acted-on self-logged noncompliance. First, compliance data is an important tool for NERC's and stakeholders' efforts to identify redundant and unnecessary requirements; absent a transparent record of what self-logged potential noncompliance is passed over by Regional Entities, NERC and stakeholders will be less equipped to identify redundant and unnecessary requirements that should be eliminated. If a significant proportion of noncompliance is so low-risk that it does not merit even a Compliance Exception, that is a strong indication that further efforts to right-size the body of standards are needed; the problem of unnecessary requirements cannot be solved in the CMEP.

And NERC's proposal to stop tracking some noncompliance for self-logs, but *not* for noncompliance discovered via other methods, has a discriminatory result: a small registered entity with few instances of noncompliance, for whom the burden of joining the self-logging program is unwarranted, would continue to have every minimal risk self-report treated as at least a Compliance Exception, which would count against that entity's ability to receive Compliance Exception treatment for future noncompliance. But a large registered entity with a significant number of *self-logged* items could nevertheless potentially keep an entirely clean record, with no impact on its ability to continue self-logging, or to receive Compliance Exception treatment for any noncompliance that *is* acted on.

If it proceeds with this proposal, NERC must make significant changes to address the serious concerns raised herein. First, it must clarify that, consistent with FERC's prior orders on this issue,[37] where a self-logged noncompliance is resolved as a Compliance Exception, FFT, or Notice of Penalty ("NOP"), the fact of having originated in a self-log does not exempt the noncompliance from the normal information-posting requirements.[38] And, also consistent with

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[35] In rejecting a proposal to eliminate the public posting of Compliance Exceptions associated with self-logged noncompliance, FERC reiterated that

> transparency in compliance and enforcement matters is beneficial to educate industry and provide additional oversight of the ERO Enterprise. It also serves to allow interested registered entities and other parties to measure consistency across entities, classes of entities, or Regional Entities, as well as demonstrating the quality of registered entities' internal controls programs, particularly an entity's ability to swiftly and effectively identify, assess, and correct possible instances of noncompliance.

2017 Order P 28. *See also id*., PP 31, 32.

[36] *Cf.* App. 4C, current §§ 3A.1 and 5.2A (setting out criteria for Compliance Exception and FFT treatment, respectively).

[37] RAI Order PP 36-39; 2017 Order PP 28, 31-32; *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193, P 68 ("FFT Order"), *on reh'g*, 139 FERC ¶ 61,168 (2012).

[38] Rule 401.11; App. 4C, proposed § 8.2. TAPS believes that NERC's exemption of self-logs from the "reporting requirements of Section 8.0," App. 4C, proposed § 4.5A, is not intended to encompass that section's obligation to

the thrust of those orders, information would need to be posted on any self-logged potential noncompliance that is not acted on,[39] analogous to the information that is currently posted for Compliance Exceptions. FERC's orders certainly do not contemplate or authorize creating an exception to the public-posting requirement for self-logged noncompliances that are not acted on in any way.

Finally, to avoid unjustified discrimination against small registered entities, either NERC must significantly reduce the administrative burden of joining and participating in the self-logging program, so that it is equally accessible to, and reasonable and cost-effective for, all registered entities (no matter how small the entity and how infrequent their noncompliance), or NERC must extend the no-further-action option to all self-*reports* of minimal risk noncompliance.[40] Failure to do so flies in the face of the statutory and regulatory requirements that NERC's Rules of Procedure be "not unduly discriminatory or preferential"[41] and "provide fair and impartial procedures for enforcement of reliability standards."[42]

C. Public Posting of Compliance Information

A. Noncompliance

NERC's proposed revisions to Rule 401.11 do not affect the obligation to post (non- Critical-Infrastructure-Protection ("CIP")) NOPs.[43] TAPS interprets the proposal to require posting "information on" confirmed potential noncompliance, rather than posting "Confirmed Violations," as a housekeeping matter: what NERC currently posts regarding FFTs and Compliance Exceptions *is* "information on" the noncompliance. TAPS would, however, oppose any proposal to reduce the information posted regarding Compliance Exceptions and FFTs.

B. Mitigation Plans

NERC proposes changes to the public availability of Mitigation Plans, when they are still used. In the context of a settlement, NERC seems to contemplate that the Plan itself would still be posted: "[The public] posting [regarding an approved settlement] shall include a copy of the

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post NOPs; we would strenuously object to any proposal to make NOPs non-public based solely on the method of discovery of the noncompliance.

[39] If self-logged noncompliance does not go through a Preliminary Screen and Assessment of Potential Noncompliance, it is possible that some instances of potential noncompliance that would have been dismissed based on one of those assessments will be posted. NERC could avoid the posting of "dismissible" potential noncompliance by requiring a Preliminary Screen and Assessment of Potential Noncompliance before a Regional Entity decides not to act on a potential noncompliance. Alternatively, a registered entity that is uncertain about the status of a particular self-logged item could request Regional Entity review on a case-by-case basis. In any event, it would be unreasonable, and contrary to the spirit of FERC's prior orders, for the ERO to decline to determine the status of self-logged potential noncompliance, and then refuse to post information on any such noncompliance based on its self-imposed lack of knowledge.

[40] In the latter case, as with self-logs, information on un-acted-on self-reports would need to be posted.

[41] 16 U.S.C. § 824*o*(f); 18 C.F.R. § 39.10(c).

[42] 16 U.S.C. 824*o*(c)(2)(C); 18 C.F.R. § 39.3(b)(2)(iii).

[43] App. 4C, proposed § 8.2.

settlement or a description of the terms of the settlement, *and a copy of any Mitigation Plan that is agreed to as part of the settlement* or a description of the Mitigating Activities."[44]

In cases where there is no settlement, however, NERC proposes to eliminate section 6.5's requirement to post associated Mitigation Plans.[45] NERC states in the Summary that it is unnecessary to post Mitigation Plans for related NOPs because "dispositions of noncompliance include descriptions of the mitigating activities."[46] But there is an inconsistency: the "information on" noncompliance that Rule 401.11 requires NERC to post includes "any Mitigation Plan or other Mitigating Activities."[47] That seems to require NERC to continue to post Mitigation Plans. Because Mitigation Plans provide registered entities valuable information that they can use to enhance their compliance with Reliability Standards and thereby enhance reliability, TAPS requests that NERC resolve the inconsistency in favor of continued posting of Mitigation Plans (subject, as always, to confidentiality/Critical Energy Infrastructure Information restrictions); where such a plan exists, there is no discernible reason for depriving other registered entities of the benefit of seeing the plan itself, rather than a description.

C. Audit Guides

Finally, NERC proposes to delete the current statement that "audit guides will be posted on NERC's website."[48] The term "audit guides" is not defined in the Rules of Procedure; it is thus unclear what information, if any, NERC is proposing to stop posting. TAPS understands that NERC, appropriately, does not intend to reduce the compliance-related information available on its website, such as Reliability Standard Audit Worksheets and Compliance Guidance. NERC should clarify that intention, and improve transparency, by stating in the Rules of Procedure which compliance guides are posted publicly.

IV. DEADLINES

NERC's proposed elimination of the reference to on-site audit work currently included in section 3.1.5.4, "Registered Entity Objections to Compliance Audit Team," makes sense given that not all audits have an on-site component. But other proposed changes to the timing of objections to members of a Compliance Audit team result in significantly stricter deadlines for registered entities, and seem to contain a serious flaw.

The proposed text[49] would read:

> Any such objections must be provided in writing to the [Compliance Enforcement Authority ("CEA")] no later than thirty (30) days after the notification of the Compliance Audit. This

[44] App. 4C, proposed § 5.6 (emphasis added).

[45] App. 4C, proposed § 6.4.

[46] Summary at 4.

[47] Proposed Rule 401.11.2.

[48] App. 4C, proposed § 4.1.

[49] App. 4C, proposed § 4.1.4.4.

> thirty- (30) day requirement shall not apply where a Compliance Audit team member has been appointed less than thirty-five (35) days prior to the start of Compliance Audit work, in which case the Registered Entity must provide any objections to the CEA within five (5) business days after receiving notice of the appointment of the Compliance Audit team member.

Given 90 days between the audit notification and the start of audit work,[50] the proposed new deadline of 30 days after the audit notification would be 60 days before the start of audit work—more than six weeks earlier than the current deadline of 15 days before the start of the audit. This proposal is untenable: first, if an audit team member is appointed between 26 and 30 days after the audit notification letter, the registered entity will have even less time to respond than the 5 days allowed for *last-minute* additions to the audit team—an unjustifiable result two months before the start of audit work. And if an audit team member is appointed between 31 and 55 days after the audit notification letter (i.e. 59 to 35 days before the start of audit work), there seems to be *no* applicable deadline.

Other than deleting the words "on-site," NERC should not adopt the proposed changes. If it nevertheless does so, it must revise the numbers to result in deadlines comparable to those currently in effect (which will require tying the primary deadline to either the start of audit work, or the date the registered entity is notified of the team member's appointment, rather than to the date of the audit notification letter), and to avoid the current proposal's twenty-four-day no man's land.

V. MITIGATION

TAPS supports NERC's proposals to move from requiring formal Mitigation Plans to more reliance on less-formal Mitigating Activities,[51] and to give the Regional Entities more discretion regarding the timing of Mitigating Activity milestones and progress reports.[52] Risk-based compliance monitoring requires more flexibility with respect to mitigation than the rules currently provide.

TAPS also supports the proposal by the American Public Power Association and the Large Public Power Council to add text to section 6.4 stating that if the CEA does not act on a revised Mitigation Plan within the applicable time limit, the revised Mitigation Plan will be deemed accepted. The proposed language is analogous to the existing approach with respect to *original* Mitigation Plans,[53] and should be adopted. There is no reason to have different rules regarding CEA non-action on revised versus original Mitigation Plans; a consistent approach will enhance the clarity of the process.

[50] App. 4C, current § 3.1.1.1, proposed § 4.1.1.

[51] Proposed Rule 403.10.5; Summary at 4.

[52] App. 4C, proposed §§ 6.2, 6.6.

[53] App. 4C, proposed § 6.5.

VI. REGIONAL ENTITIES

TAPS supports NERC's proposal to eliminate ROP language regarding Regional Entity compliance with Reliability Standards, since no Reliability Standards are now applicable to Regional Entities. NERC should use this opportunity to remove Segment 10 from the Registered Ballot Body, as well. While the ERO has an important role in standards development—for example, TAPS believes that the input of Compliance Staff would be very valuable to drafting teams—it is inappropriate for the Regional Entities to vote on standards; they are no longer stakeholders in the same sense as any of the other segments.

VII. CONCLUSION

TAPS looks forward to continuing to work with NERC in the new year to make the CMEP more risk-based and streamlined, while ensuring that NERC continues to meet its important obligations to ensure transparency and impartial and nondiscriminatory enforcement.