

# NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

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

## Appeals Process for NERC Compliance Enforcement and Readiness Audit Programs Comment Form

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Company: ISO/RTO Council

Region:

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### Comments:

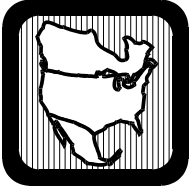
Comment of the ISO/RTO Council  
on the Appeals Process for NERC Compliance Enforcement  
and Readiness Audit Programs

The ISO/RTO Council (“IRC”) appreciates the opportunity to comment on the February 3, 2005 draft of the Appeals Process for NERC Compliance Enforcement and Readiness Audit Program (the “Draft”). We commend NERC and the members of the Enforcement, Sanctions, and Disclosure Subcommittee (“ESDS”) for the hard work in making significant revisions and improvements to the prior version. We offer the following comments and concerns to the process in the current Draft:

1. The appeals process must be available prior to publication. “Due process” after publication gives no protection to the appealing party, as the entity involved has likely suffered harm resulting from the publication, which cannot be reversed by later vindication. Audit reports should be considered “preliminary” until:
  - a. the audited entity declines to pursue or continue their appeal;
  - b. a dispute is resolved in the audited entity’s favor within the audit process; or
  - c. the appeals process is pursued to its conclusion.

Efficient execution of the procedures in the timeframes prescribed in the appeals process would provide adequate protection against abuses of the process to delay publication. Legitimate appeals may be heard immediately, and due process afforded, without unduly delaying publication in appropriate circumstances.

Submit comments to: [appealscomments@nerc.com](mailto:appealscomments@nerc.com) by COB **April 7, 2005**



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2. Appealing parties should not be required to hold NERC harmless from the consequences of an improper disclosure of audit-related information.
3. “Resolutions” or “settlements” occurring within the appeals process should not be published, to avoid the same stigma as a violation, except when the audited party consents to a disclosure. Otherwise, there would be no advantage or motivation for an audited party to engage in meaningful dialogue within the appeals process.
4. Audited parties should be afforded the opportunity to present their position throughout the appeals process. Exclusion of the audited entity from consideration by the Board, leads to potential for bias in the presentation to the Board, particularly since the CCC will have just decided the question against the audited entity.
5. While the NERC Board is independent from the NERC member organizations, it is not necessarily independent from the NERC Committees and staff. There is potential for, or appearance of, bias by the NERC Board in favor of the underlying NERC Committee Structure.. We would suggest for NERC to consider inclusion of an outside administrative or industry group, or a resort to arbitration, where the arbitrator would be bound by the body of prior decisions relevant to current disputes. This would give the NERC Board of Trustees the opportunity to dissociate itself from the appeals process.
6. There should be an express statement that all parties retain all available judicial remedies in the event of a dispute.