Technical Feasibility Exceptions

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What is a Technical Feasibility Exception?

A Technical Feasibility Exception (TFE) is an exception to strict compliance with a standard on the grounds of technical infeasibility or technical limitations.

However, a TFE does not relieve an entity of its obligation to comply with the applicable requirement – it authorizes an alternative to strict compliance via the use of compensating or mitigating measures.
Overview

• TFE’s may be submitted for certain requirements of the NERC CIP standards.

• The original standards that allowed TFE’s were:
  – CIP-005-1: R2.4, R2.6, R3.1 and R3.2
  – CIP-007-1: R2.3, R4, R5.3, R5.3.1, R5.3.2, R5.3.3, R6 and R6.3

• As outlined in NERC Compliance Process Bulletin # 2009-007, TFE’s for these standards were required to be submitted by January 31, 2010.
Overview

• NERC Compliance Process Bulletin #2010-001 added additional standards. These standards were:
  – CIP-006-1 R1.1 (and CIP-006-2 R1.1 after April 1, 2010)
  – CIP-007-1 R3 (and CIP-007-2 R3 after April 1, 2010)

• The deadline for submission of TFE’s for these additional standards was April 30, 2010.
The TFE Process

The TFE process has two parts
The TFE Process

Part “A” is the initial request

Part “B” is the substantive review of the request
Part “A”

• The Part “A” form is available on CDAA.
• Part “A” is the original filing by the entity and is a request/application for a TFE.
• The entity is responsible for filling out all of the required information and providing a brief justification for the TFE request.
• When a Part “A” request is submitted to NPCC it is assigned a unique identification number (e.g., 2010-NPCC-TFE-00001).
• Please include this number in all communications regarding the TFE.
If submitting a TFE in multiple regions please be sure to cross-reference the corresponding identification numbers in the comments section.
Part “A”

• A Part “A” request will be accepted if it is completed correctly and provides a justification for the TFE.

• The entity will be notified via email after their Part “A” request is accepted.

• Attached to the email will be a formal letter that will list all accepted TFE’s submitted by the entity, if more than one has been accepted.

• The status of the TFE in CDAA will change to “Accepted” to reflect the fact that the Part “A” was reviewed and accepted by NPCC.
Part “A”

• A Part “A” may be Rejected if:
  – It was not completed correctly.
  – It is missing information.
  – It doesn’t provide a reasonable justification.
  – It was filed for the wrong standard.

• An Entity has one opportunity to correct and resubmit a rejected Part “A”.
Part “A”

• TFE’s are either accepted in their entirety or rejected in their entirety, even if the TFE is for two or more covered Assets subject to the same applicable requirement.

• Once a TFE Part “A” is submitted by the entity, NPCC has 60 days to accept or reject it and notify the entity of its determination.

• This is the initial “Safe Harbor” period.
Amendment of Part “A”

An entity may at any time amend a pending TFE Request that is under review for the purpose of providing additional or revised information.
Part “B”

• The NPCC Part “B” form is available for download in CDAA.

• Part “B” substantive reviews must be completed by NPCC within a year after the original Part “A” request was submitted unless the entity is otherwise notified.

• The second “Safe Harbor” period starts when the Part “A” is accepted and ends when the Part “B” is reviewed.

• The Part “B” substantive review may be conducted on-site or at NPCC’s office.

• If the entity does not consider the Part “B” information to be CEII then they may upload it to NPCC’s secure FTP site.
Accepted vs. Approved

• “Accepted” does not equal “Approved”
• Part “A” can be Accepted or Rejected.
• Part “B” can be Approved or Disapproved.
Part “B”

• Some examples of evidence that should be provided with a TFE Part “B” include:
  – Network diagrams
  – Serial numbers of cited assets
  – Descriptions of the assets
  – Locations of the assets
  – Vendor letters that justify TFE request
  – Description of any compensatory measures
Part “B”

• After the review has been completed the entity will be asked to provide a brief summary of the evidence and justification for the TFE on the signature page of the Part “B” form.
• This summary should not contain confidential information.
• The entity will be asked to scan the first and last pages of the Part “B” forms, and the original Part “A” forms that were submitted. This must be done for all TFE’s that were reviewed.
• This is the only information that NPCC will retain and is the only information that will be sent to NERC.
Part “B”

• The entity will also be asked to scan the entire Part “B” form, all evidence and supporting documentation, and the original Part “A” forms for all TFE’s.

• The files will be burned to a CD then the CD will be sealed in a Tyvek envelope.

• NPCC and entity personnel that participated in the review will sign and seal the envelope.

• Envelope must be retained by the entity for possible review at a later date by NERC and/or FERC.

• A custody letter will be sealed in the Tyvek envelope that is retained by the entity.
Part “B”

After NPCC completes the substantive review of the Part “B” it is either “Approved” or “Disapproved”.
Part “B” – If Approved

• NPCC will send a letter to the entity indicating that the TFE has been approved. This letter will be part of the package that NPCC sends to NERC.

• Multiple approved TFE requests may be included in one letter.

• At an entity’s request NPCC or the entity may terminate a TFE after it has been reviewed and approved, as part of the Part “B” process, if it is no longer needed.
Part “B” – Progress Reports

• The entity will be required to submit quarterly progress reports to NPCC for any TFE that lists a completion date.
  – Reports must cover the entity’s progress in implementing compensatory measures and/or mitigating measures they have adopted.
  – Reports are due by the end of the month immediately following the end of the calendar quarter for which the report is being submitted.
    • Ex: A report for the 1st quarter, which ends March 31st, would be due by April 30th.
Part “B” – Progress Reports

- An Annual report will be required for any open-ended TFE’s.

- Both quarterly and annual reports shall include a statement, signed by the Senior Manager or Delegate, which indicates that he or she has read and approves the submission of the report.

- NPCC will notify the entity and NERC that the quarterly and/or annual report has been received.
Part “B” – If Disapproved

• NPCC will notify the entity via a letter attachment to an email.

• This letter will state the reasons that the TFE Request was disapproved.

• A copy of this letter will be sent to NERC.

• The letter may state any revisions to the TFE request that, if made by the Entity, would result in approval of the TFE Request. Such revisions may include, but are not limited to:
  – Changing the proposed mitigating measures
  – Implementation schedules
  – Expiration Date
Part “B” – If Disapproved

If an entity submits an amended TFE Request to NPCC that incorporates the revisions listed in the notice of disapproval then NPCC will approve the revised TFE Request.
Part “B” – If Disapproved

• A notice disapproving a TFE Request will state an Effective Date, which will be no earlier than the 61st calendar day after the date of the notice.

• After the Effective Date, the Entity is subject to issuance of a Notice of Alleged Violation by NPCC for the requirement that was the subject of the disapproved TFE Request unless it done one or more of the following:
  – Submitted an amended TFE Request.
  – Achieved Strict Compliance with the Applicable Requirement, provided the Effective Date occurs prior to the Entity’s Compliant Date for the Applicable Requirement, then the Responsible Entity is not subject to issuance of a notice of Alleged Violation until the Compliant Date.

• Any Notice of Alleged Violation issued for the applicable requirement will be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.
Part “B” – If Disapproved

An Entity shall not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, or for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request, for the period from the earlier of:

- The date of the Entity’s notice that the TFE Request is accepted as complete
- The date that is sixty (60) calendar days after submission of the TFE Request

To:

- The Effective Date of the Entity’s notice that the TFE Request is rejected
- The date of the Entity’s notice that the TFE Request is approved
- The Effective Date of the Entity’s notice that the TFE Request is disapproved

Whichever is applicable.
Further Information

Please refer to NERC Compliance Process Bulletins #2009-007 (dated 11/9/09) and #2010-001 (dated 1/27/10).
Questions?
My Contact Information

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